

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JACQUELINE D. BERRY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A.No. 06-217-GMS
	:	
STATE OF DELAWARE,	:	
DIVISION OF CHILD SUPPORT,	:	
	:	
Defendant.	:	

**DEFENDANT’S OPENING BRIEF IN SUPPORT**  
**OF SUMMARY JUDGMENT**

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

Marc P. Niedzielski (# 2616)  
Deputy Attorney General  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8400

DATED: May 2, 2007

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	3
NATURE AND STAGE OF PROCEEDINGS .....	4
SUMMARY OF THE ARGUMENT .....	5
STATEMENT OF THE FACTS .....	6

**ARGUMENT I.**

DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS UNDER THE ADA AS THE CLAIMS ARE BARRED BY THE ELEVENTH AMENDMENT TO THE CONSTITUTION .....	8
---	---

**ARGUMENT II.**

PLAINTIFF HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION OR RETALIATION UNDER TITLE VII OR THE EQUAL PAY ACT .....	11
--	----

CONCLUSION .....	14
------------------	----

## **TABLE OF AUTHORITIES**

<i>Alden v. Maine</i> , 527 U.S. 706 (1999) .....	9
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986) .....	8
<i>Board of Trustees v. Garrett</i> , 531 U.S. 356 (2001) .....	10
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986) .....	8
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997) .....	10
<i>Corning Glass Works v. Brennan</i> , 417 U.S. 188 (1974) .....	13
<i>Fuentes v. Perskie</i> , 32 F.3d 759 (3d Cir. 1994) .....	11, 12
<i>Hampton v. Borough of Tinton Falls Police Dept.</i> , 98 F.3d 107 (3d Cir. 1996) .....	9
<i>Jones v. Wilmington</i> , 2004 WL 1534778 (D.Del. June 14, 2004) .....	12
<i>Lavia v. Pennsylvania Department of Corrections</i> , 224 F.3d 190 (3d Cir. 2000) .....	10
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986) .....	9
<i>McDonnell-Douglas v. Green</i> , 411 U.S. 792 (1973) .....	11
<i>Sheridan v. DuPont</i> , 100 F.3d 1061 (3d Cir. 1996) .....	12
<i>St. Mary's Honor Center v. Hicks</i> , 509 U.S. 502 (1993) .....	12
<i>Texas Dept. of Community Affairs v. Burdine</i> , 450 U.S. 248 (1981) .....	11
<i>Waldron v. SL Industries</i> , 56 F.3d 491 (3d Cir. 1995) .....	11
 <u>Statutes and Other Authorities</u>	
Eleventh Amendment of the United States Constitution .....	<i>passim</i>
Fourteenth Amendment of the United States Constitution .....	10
29 U.S.C. § 206(d)(1) .....	13
42 U.S.C. § 12203 .....	10
Fed. R. Civ. P. 56(c) .....	8

**NATURE AND STAGE OF THE PROCEEDINGS**

On March 31, 2006, plaintiff commenced this *pro se* action by filing a complaint. (D.I. 1) On May 12, 2006, a summons was issued against the State of Delaware Division of Child Support.

On June 19, 2006, defendant answered the complaint and asserted a number of defenses. (D.I. 5)

On August 1, 2006, plaintiff was permitted to amend her complaint and on August 4, 2006, defendant filed an answer to the amended complaint. (D.I. 7, 9)

On August 30, 2006, the Court entered a Scheduling Order. (D.I. 10)

On September 5, 2006, defendant filed and served interrogatories and request for production. (D.I. 11,12)

On October 30, 2006, plaintiff requested an extension of time from the Court to answer defendant's discovery. (D.I. 14)

On January 17, 2007, defense counsel wrote to plaintiff regarding the outstanding discovery. (D.I. 17)

On February 28, 2007, the plaintiff was deposed. (D.I. 18)

On March 9, 2007, defendant moved for an extension of discovery and to convene a telephone conference.

On May 2, 2007, defendant moved for summary judgment in accordance with the Scheduling Order and this is its Opening Brief.

## **SUMMARY OF THE ARGUMENT**

### **I.**

Plaintiff's claims under the ADA are barred by the Eleventh Amendment of the United States Constitution which divests the Court of jurisdiction of lawsuits by citizens against a State.

### **II.**

To the extent plaintiff states a legal claim for racial discrimination and retaliation under Title VII, the record is devoid of sufficient evidence for the matter to go forward.

### **STATEMENT OF THE FACTS**

The plaintiff commenced employment with the State of Delaware in 1977 and has been employed with the State in a number of different positions until she resigned in August 2005. (Berry 9, 63) She started at the Stokely Center in Georgetown and worked as a Certified Nursing Assistant. Then she worked at the Hospital for the Chronically Ill in Smyrna, Delaware. (Berry Tr. 16-17) In 2000, she started her employment with the Division of Child Support Enforcement in the position of Child Support Specialist ["CSS"] in the Consumer Service Unit. (Berry Tr.18-19) However, during the period 1977 until 2005, plaintiff was only continuously employed with the State for 11 years, 1 month and 15 days. (Berry Tr. 63-64)

The position of CSS requires the employee to answer the phone and type on a computer keyboard the entire work day. The telephone calls come from non-custodial parents who are being forced to pay child support and the custodial parents who are supposed to be receiving the child support. (Berry Tr. 20-21) There is only a single location for the Consumer Service unit which is in New Castle County. (Berry Tr. 19)

In 2003, plaintiff transferred to a case worker unit in Sussex County and then transferred back to New Castle County 8 months later to rejoin the Consumer Service Unit as a CSS. (Berry Tr. 75)

In June 2004, the plaintiff was out of work due to bilateral carpal tunnel syndrome and female problems. (Berry Tr. 66) On November 8, 2004, plaintiff

was released by her treating physician to return to work, but with restrictions that preclude her work as a CSS in the Consumer Service Unit. (Charge of Discrimination, January 12, 2005)

On January 12, 2005, plaintiff filed a Charge of Discrimination with the Delaware Department of Labor. (Berry Tr. 48)

In June 2005, Plaintiff was provided an alternative duty assignment for two months in the tax intercept unit. (Berry Tr. 97)

In June, 2005, plaintiff applied for a State disability which was denied. (Berry Tr. 62-63)

On August 15, 2005, plaintiff called an office in DHSS to inform staff that she had resigned her employment and had been employed by the North Carolina Division of Child Support Enforcement. (Berry Tr. 9, 73-74)

During her employment with DCSE, plaintiff missed a lot of time from work and had problems with others due to her work attitude. (Declaration of Charles E. Hayward, Director)

## **ARGUMENT I.**

DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS UNDER THE ADA AS THE CLAIMS ARE BARRED BY THE ELEVENTH AMENDMENT TO THE CONSTITUTION.

### **Introduction:**

Summary judgment is appropriate when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue of material fact is one that “may reasonably be resolved in favor of either Party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 259 (1986). The moving party bears the initial burden of demonstrating the absence of material issues of fact. *Celotex Corp.*, at 323. However, the moving party need not support its motion with affidavits or other documents disproving the nonmoving party's claim, but need only “show - - that is point out to the district court - - that there is an absence of evidence to support the nonmoving party's case.” *Id.*, at 325. The nonmoving party must go beyond the pleadings and through affidavits or other evidence demonstrate the existence of a genuine issue of material fact. *Id.*, at 314. The district court is



required to construe the evidentiary record so as to give the nonmoving party reasonable factual inferences. *Hampton v. Borough of Tinton Falls Police Dept.*, 98 F.3d 107, 112 (3d Cir. 1996). Summary judgment should be granted if the court finds, in consideration of all of the evidence, that no reasonable trier of fact could find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

For the reasons that follow, the defendant is entitled to judgment as a matter of law as to plaintiff's claim of any violation of the Americans with Disability Act ["ADA"]. (complaint ¶ 10, D.I. 1)

**(a) The Eleventh Amendment:**

The Eleventh Amendment to the United States Constitution provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Supreme Court in describing the immunity of states from suit observed that "Eleventh Amendment immunity ... is convenient shorthand but something of a misnomer, for the sovereign immunity of the States neither derives from nor is limited by, the terms of the Eleventh Amendment." *Alden v. Maine*, 527 U.S. 706, 713 (1999). Instead, "the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today except as altered by the plan of the Convention or certain constitutional Amendments." *Id.*

Congress's sole constitutional authority to subject States to suit by individuals must arise under section 5 of the Fourteenth Amendment and not its Article I powers<sup>1</sup>. *Board of Trustees v. Garrett*, 531 U.S. 356, 364 (2001)[striking claims under the ADA against the States. The legislative enactment waiving the State's immunity must be remedial, congruent and proportional "to the injury to be prevented and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997)[striking claims under the Religious Rights Restoration Act against state actors]. Since classifications regarding the disabled need only have a rational basis to comport with the equal protection clause of the Fourteenth Amendment, it is clear that the ADA is not "enforcing" that Amendment nor is the ADA remedial, congruent or proportional. *Garrett*, 531 U.S. at 374; *Lavia v. Pennsylvania Department of Corrections*, 224 F.3d 190 (3d Cir. 2000)[ADA Title I).

Accordingly, Congress lacks the authority to subject Delaware to the ADA and defendant is entitled to judgment in its favor. For the same reason all of plaintiff's claims under 42 U.S.C. § 12203(retaliation under the ADA) are barred by Eleventh Amendment immunity.

---

<sup>1</sup> Since the Eleventh Amendment was enacted after Article I of the Constitution.

## **ARGUMENT II.**

PLAINTIFF HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION OR RETAILATION UNDER TITLE VII OR THE EQUAL PAY ACT.

### **(a) Race Discrimination**

The legal analysis for a discrimination claim under Title VII is well-settled. Since plaintiff has not identified any direct evidence of discrimination, he must establish a prima facie case as set forth under *McDonnell-Douglas v. Green*, 411 U.S. 792 (1973).

Under the *McDonnell Douglas* analysis, a plaintiff may rely upon indirect evidence that race was a motivating factor in an employment action. The plaintiff must produce evidence that (1) he is a member of a protected class, that (2) he was qualified for the position at issue, and that (3) any adverse employment action for the position was “under circumstances that give rise to an inference of unlawful discrimination.” *Waldron v. SL Industries*, 56 F.3d 491, 494 (3d Cir. 1995) (citing *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981)). Upon the plaintiff’s production of evidence to establish this prima facie case, the burden shifts to the defendant to “articulate some legitimate, nondiscriminatory reason” for the purported adverse action. *McDonnell-Douglas v. Green*, 411 U.S. 792, 802 (1973). The defendant is free to articulate any legitimate reason for the purported adverse action; he does not need to show that the articulated reason motivated the purported adverse action. *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). Once the defendant has articulated that reason, the burden shifts back to the

plaintiff, who must prove that the reason the defendant articulated was a pretext and that the purported adverse action was in fact racially motivated. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 512 (1993). A plaintiff may withstand a motion for summary judgment only if the plaintiff is able to point to some evidence, direct or circumstantial, from which a fact-finder could reasonably either disbelieve the defendant's articulated legitimate reason for the purported adverse action or believe that an invidious discriminatory reason was more likely than not the motivating or determinative cause of the purported adverse action. *Fuentes v. Perskie*, 32 F.3d at 764; *Sheridan v. DuPont*, 100 F.3d 1061, 1067 (3d Cir. 1996). A plaintiff may not rely upon evidence that members of the protected class were generally treated differently; such generalizations are not relevant to the question whether others not in the protected class were treated more favorably. *Jones v. Wilmington*, 2004 WL 1534778 at \* 5, n.8 (D.Del. June 14, 2004).

In the present matter defendant concedes that plaintiff is in a protected class, however plaintiff has failed to identify any adverse employment action or retaliation due to commencing the EEOC administrative proceedings in January 2005. Plaintiff does complain about one of her two supervisors, a Brenda Annand. Plaintiff testified that she does not like these supervisor's interpersonal skills. However, she does not evince an adverse employment action. To the contrary, plaintiff testified that she voluntarily resigned from DCSE on August 15, 2005 to take another position with the North Carolina Division of Child Support Enforcement. (Berry Tr. 6-9)

There is no factual basis for the Title VII claims and defendant is entitled to judgment.

**(b) Equal Pay Act**

In plaintiff's complaint, she alleges a claim under the Equal Pay Act. (Complaint ¶ 10, D.I. 1) However, there is no evidence of wage difference between male and female employees in the Child Support Specialist position at DCSE and therefore plaintiff has failed to establish a prima facie case under the Equal Pay Act. 29 U.S.C. § 206(d)(1); *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974).

Defendant is entitled to judgment under the Equal Pay Act.

**CONCLUSION**

For the above reasons, the defendant is entitled to judgment pursuant to Rule 56(c) as matter of law on the complaint or amended complaint.

Respectfully submitted,

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/ Marc P. Niedzielski  
Marc P. Niedzielski (#2616)  
Deputy Attorney General  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8324  
Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE**

JACQUELINE D. BERRY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A.No. 06-217-GMS
	:	
STATE OF DELAWARE,	:	
DIVISION OF CHILD SUPPORT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF MAILING AND/OR DELIVERY**

The undersigned certifies that on May 2, 2007, he caused the attached document to be delivered to the following person postage prepaid via First Class Mail:

**NAME AND ADDRESS OF RECIPIENT(S):**

Jacqueline D. Berry  
20 Hickory Lane  
Dover, DE 19904

/s/ Marc P. Niedzielski  
Marc P. Niedzielski, I.D. No. 2616  
Deputy Attorney General  
Carvel State Office Building  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302)577-8400  
Attorney for Defendant

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA  
☒ EEOC

170-2005-00401

**DELAWARE DEPARTMENT OF LABOR (DDOL)**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Ms. Jacqueline D. Berry**

Home Phone No. (Incl Area Code)

**(302) 697-9120**

Date of Birth

**05/31/1956**

Street Address

City, State and ZIP Code

**20 Hickory Lane Dover, DE 19904**

**Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)**

Name

**DEL. DIVISION OF CHILD SUPPORT**

No. Employees, Members

**500 or More**

Phone No. (Include Area Code)

**(302)326-6024**

Street Address

City, State and ZIP Code

**P. O. Box 904, New Castle, DE 19720**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**03-01-2004**

**11-16-2004**

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

**In or about August, 2000 I was hired by Respondent as a Child Support Specialist I. During my employment with Respondent I always received good performance reviews and no disciplinary actions.**

**Recently, I had surgery for carpal tunnel syndrome in both hands and also a hysterectomy for prolonged bleeding. I was out of work since June 2004. Respondent denied me a reasonable accommodation for my disability and then discharged me from my position for not returning to work in September 2004. My doctor released me to return to work on November 8. Respondent then told me that I could not return unless I had no restrictions. Thereafter, I went to the Human Resources Department to report these discriminatory actions. Subsequently, Respondent retaliated against me in the following manner (but not limited to): 1. Issuing me an unfavorable performance evaluation. 2. Denying me a transfer to another department to accommodate my disability. 3. Denial to a ladder increase. To the best of my knowledge, other non-Black co-workers (Deborah Flora and Beth Arnold), have been treated better than I.**

**4. HARASSMENT DUE TO USING FMLA LEAVE. (OWN PR DUPE 23)**

**I believe that I have been discriminated against because of my race (Black), retaliation, and disability, in violation of Title VII of the Civil Rights Act of 1964 and the Americans With Disability Act of 1990 (ADA) in that Respondent subjected me with the above mentioned.**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

**Jan 12, 2005**

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

**MAY 26 2005**

**NCC/Human Resources**





**In the Matter Of:**

**Berry**

**v.**

**State of Delaware, Division of Child  
Support**

**C.A. # 06-217-GMS**

---

**Transcript of:**

**Jacqueline D. Berry**

**February 28, 2007**

---

Wilcox and Fetzer, Ltd.  
Phone: 302-655-0477  
Fax: 302-655-0497  
Email: [depos@wilfet.com](mailto:depos@wilfet.com)  
Internet: [www.wilfet.com](http://www.wilfet.com)

Berry v. State of Delaware, Division of Child Support

1

IN THE UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF DELAWARE

JACQUELINE D. BERRY,	)	
	)	
Plaintiff;	)	
	)	Civil Action No.
v.	)	06-217-GMS
	)	
STATE OF DELAWARE,	)	
DIVISION OF CHILD SUPPORT,	)	
	)	
Defendant.	)	

Deposition of JACQUELINE D. BERRY taken pursuant to notice at the Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, Delaware, beginning at 1:00 p.m. on Wednesday, February 28, 2007, before Ann M. Calligan, Registered Merit Reporter and Notary Public.

APPEARANCES:

JACQUELINE D. BERRY, pro se;

MARC P. NIEDZIELSKI, Esquire  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, Delaware 19801  
on behalf of the Defendant.

WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477  
www.wilfet.com

## Berry v. State of Delaware, Division of Child Support

<p style="text-align: right;">2</p> <p>1 JACQUELINE D. BERRY, 2 the witness herein, having first been 3 duly sworn on oath, was examined and 4 testified as follows: 5 EXAMINATION 6 BY MR. NIEDZIELSKI: 7 Q. Ms. Berry, my name is Marc Niedzielski. Have 8 you ever had your deposition taken before? 9 A. For this? 10 Q. For anything. 11 A. I think. I think. 12 Q. Let me just go over some of the basic rules so 13 you understand. I will be asking you a series of 14 questions. It's important that, before you answer the 15 question, you understand the question. So if, for 16 some reason, I ask you a question you don't understand 17 what I'm asking, you should just let me know and I 18 will rephrase the question. 19 It's also important to understand that the 20 court reporter next to me is reporting 21 stenographically both the questions and the responses 22 to them. But there has to be a verbal response. In 23 conversations, frequently we talk to one another and 24 nod our heads and things like that. That doesn't</p>	<p style="text-align: right;">4</p> <p>1 B0001 through B00152, am I correct? 2 A. Yes. 3 Q. And these just generally are your responses to 4 my interrogatories, correct -- 5 A. Yes. 6 Q. -- that I propounded on you? All right. 7 Before we get into those, I would like to 8 ask you some other background questions about you 9 actually. What's your date of birth? 10 A. May 31st, 1956. 11 Q. And where were you born? 12 A. Dover, Delaware. 13 Q. Are your parents still living? 14 A. My mother is. My father is deceased. 15 Q. Does your mother still live in Dover? 16 A. Yes. 17 Q. What's her name? 18 A. Phyllis Scott. 19 Q. And what's her address? 20 A. 20 Hickory Lane, Dover, Delaware. 21 Q. And what's your present address? 22 A. 20 Hickory Lane, Dover, Delaware. 23 Q. Is that your mother's house, or is it your 24 house?</p>
<p style="text-align: right;">3</p> <p>1 transcribe. Okay? So when I ask you a question, try 2 to give a verbal response to the question. If you 3 want to take a break at any time, let me know and 4 we'll make arrangements to do that. Okay? 5 A. (Indicating.) 6 Q. Ms. Berry, prior to going on the record here, I 7 asked you about -- do you recall receiving two 8 authorizations for release of information from me by 9 letter? 10 A. Yes. 11 Q. And I asked you if you would be willing to sign 12 them? 13 A. And I said no. 14 Q. That's still the case, is that correct? 15 A. Yes. 16 Q. All right. 17 What I'd like to do is I'm going to put in 18 front of you a document, and it's going to look 19 familiar because you were the one that produced it. 20 What's different about this document is you see 21 there's numbers in the lower right-hand side? 22 A. Mm-hmm. 23 Q. Those are called Bates stamp numbers. We had 24 them put on. So these documents go from Bates stamp</p>	<p style="text-align: right;">5</p> <p>1 A. My mother's house. 2 Q. Does she own it or is she buying it? 3 A. She's buying it. 4 Q. As a child were you raised there? 5 A. Not as a child. 6 Q. Do you remember when your mother acquired that 7 house? 8 A. No, I don't. 9 Q. How long have you most recently been living at 10 20 Hickory Lane? 11 A. Pretty near all my life. 12 Q. Well, was there a period of time most recently 13 where you had moved from out of the state or some 14 other address? 15 A. Yes. 16 Q. Where did you move from? 17 A. I went to stay with my son. 18 Q. Where is your son? 19 A. In North Carolina. 20 Q. What's your son's name? 21 A. Donnie Berry. 22 Q. And he lives in North Carolina? 23 A. Mm-hmm. 24 Q. What city? What's the address in North</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

6	<p>1 Carolina?</p> <p>2 A. 5018 Oak Pasture Lane, Charlotte, North</p> <p>3 Carolina.</p> <p>4 Q. What was the reason that you went to live with</p> <p>5 your son?</p> <p>6 A. Because I was out on workman's comp. Division</p> <p>7 of Child Support would not let me return to work and I</p> <p>8 started seeking employment and was offered a job at</p> <p>9 North Carolina.</p> <p>10 Q. And how old is your son?</p> <p>11 A. 25.</p> <p>12 Q. And do you remember the first day you moved</p> <p>13 down there to live with your son?</p> <p>14 A. To North Carolina?</p> <p>15 Q. Mm-hmm.</p> <p>16 A. I left on August 29th of 2005 to drive down.</p> <p>17 Q. And you remained with your son for how long</p> <p>18 approximately?</p> <p>19 A. Well, I mean, I periodically go back and forth</p> <p>20 to help him manage his properties because he has</p> <p>21 employment which requires him to be out of state a</p> <p>22 lot. So currently I help him manage his properties.</p> <p>23 Q. All right. So you go back there on occasion?</p> <p>24 A. Basically every weekend I go down there.</p>	8
7	<p>1 Now, when I went down there before the</p> <p>2 work, I would come back to Delaware basically every</p> <p>3 weekend.</p> <p>4 Q. From August 29, 2005, did you get your job in</p> <p>5 North Carolina the same day?</p> <p>6 A. No. I didn't start working until September</p> <p>7 1st.</p> <p>8 Q. And who did you go get a job with?</p> <p>9 A. Division of Child Support in North Carolina.</p> <p>10 Q. Is that a state office or a county office?</p> <p>11 A. It was state employment.</p> <p>12 Q. And did you fill in an application for that</p> <p>13 job?</p> <p>14 A. Did I fill an application? Yes, I did.</p> <p>15 Q. And when did you fill out the application for</p> <p>16 the job?</p> <p>17 A. I don't recall the date when I filled out the</p> <p>18 application for the job. I don't recall the exact</p> <p>19 date, but I did fill an application.</p> <p>20 Q. Do you recall if it was sometime prior to</p> <p>21 August 29th, 2005?</p> <p>22 A. Yes, it was prior to that because I was offered</p> <p>23 the job prior to August 29th.</p> <p>24 Q. Do you recall when you were offered the job?</p>	9
	<p>1 A. I don't recall the date. I was offered the</p> <p>2 job. I think -- I don't know. I don't remember the</p> <p>3 exact date. It was early August.</p> <p>4 Q. So does that mean that whenever you did your</p> <p>5 application was sometime prior to when you were</p> <p>6 offered the job?</p> <p>7 A. Yes.</p> <p>8 Q. Did they ask you for references?</p> <p>9 A. On my application?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, they did.</p> <p>12 Q. And who did you list as references?</p> <p>13 A. An ex-supervisor from another agency I used to</p> <p>14 work with. Telemine Corporation, I know that. As far</p> <p>15 as the other references on the application, I don't</p> <p>16 recall. But I know I used that supervisor there</p> <p>17 because I currently still use her.</p> <p>18 Q. What was the job that you got in North</p> <p>19 Carolina?</p> <p>20 A. Child support agent 2.</p> <p>21 Q. What were the duties of that job?</p> <p>22 A. Enforcement of child support orders.</p> <p>23 Q. Was it similar to the job you had had with the</p> <p>24 Division of Child Support Enforcement in Delaware?</p>	

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">10</p> <p>1 Q. What other things did you discuss with --</p> <p>2 A. What I discussed with her there was, when I</p> <p>3 signed up for disability, it's denied. I was told</p> <p>4 there was overpayment as a result of the disability</p> <p>5 being denied and discussed the process of paying the</p> <p>6 money back because I was not returning back to child</p> <p>7 support here in Delaware.</p> <p>8 Q. And what did you tell her you were going to do</p> <p>9 or not do? Did you tell her you were going to make</p> <p>10 arrangements to pay it back?</p> <p>11 A. Well, what she told me, she had to discuss it</p> <p>12 with her supervisor to see what the process was with</p> <p>13 me paying it back because it never had an employee</p> <p>14 that they state has overpaid as a result of disability</p> <p>15 being denied that didn't come back to work. Normal</p> <p>16 procedure, she says, the person returns to work and</p> <p>17 they, I guess, garnish it from earnings when they</p> <p>18 return back to work.</p> <p>19 Q. In other words, they make an adjustment in</p> <p>20 their paycheck until it's paid back?</p> <p>21 A. Yes.</p> <p>22 So I spoke to her with regard to not</p> <p>23 returning and how to pay that money back. She told me</p> <p>24 she had to follow up with her supervisor. She'd call</p>	<p style="text-align: right;">12</p> <p>1 job?</p> <p>2 A. Yes.</p> <p>3 Q. How did you do it?</p> <p>4 A. I've done it verbally, and I've done it</p> <p>5 written. When I resigned, because I'm currently not</p> <p>6 working in North Carolina, I did that verbally.</p> <p>7 Q. You just called them, told them you are not</p> <p>8 coming back; same thing in North Carolina you did when</p> <p>9 you called Delaware and said, "I'm not coming back to</p> <p>10 work"?</p> <p>11 A. Yes.</p> <p>12 Q. Why did you not return to work in North</p> <p>13 Carolina?</p> <p>14 A. Why did I not return? Because of my mother's</p> <p>15 illness.</p> <p>16 Q. How long did you work in North Carolina for</p> <p>17 their Division of Child Support?</p> <p>18 A. Two days shy of a year.</p> <p>19 Q. So you worked like until the end of August of</p> <p>20 2006?</p> <p>21 A. No. I started September the 1st of 2005, and</p> <p>22 on or about September 26 was when I informed them</p> <p>23 verbally that I was not returning.</p> <p>24 Q. That was more than a year then?</p>
<p style="text-align: right;">11</p> <p>1 me within 24 hours. So I didn't get a call from her.</p> <p>2 I called back. I left a voice message 24 hours later.</p> <p>3 Then I called back 48 hours later, left a voice</p> <p>4 message. Then the third day, I called because I knew</p> <p>5 that was I leaving to leave the state of Delaware.</p> <p>6 And spoke with the Cindi Starr who's another</p> <p>7 representative in HR. When I was informed by her that</p> <p>8 LaTanya Warren was no longer employed.</p> <p>9 Q. So did you repeat everything you told LaTanya</p> <p>10 to Cindi about you not coming back?</p> <p>11 A. Pardon me?</p> <p>12 Q. Did you tell Cindi Starr everything you told</p> <p>13 LaTanya?</p> <p>14 A. Yes. And also, I had attorney representation</p> <p>15 for workman's comp because I was on workman's comp.</p> <p>16 My attorney was informed -- who informed their legal</p> <p>17 rep for the workman's comp case that I was not</p> <p>18 returning back to child support.</p> <p>19 Q. All right. So your lawyer that was</p> <p>20 representing your workman's compensation case notified</p> <p>21 somebody that you were not returning?</p> <p>22 A. Notified the state's legal representation for</p> <p>23 the workman's comp that I wasn't coming back.</p> <p>24 Q. All right. Have you resigned before from a</p>	<p style="text-align: right;">13</p> <p>1 A. Hmm?</p> <p>2 Q. I thought you said two days short of a year you</p> <p>3 worked for North Carolina.</p> <p>4 A. Oh. The reason why you're saying it was longer</p> <p>5 than a year, I had took a three-week leave of absence</p> <p>6 which set my time back.</p> <p>7 Q. Okay. I got you.</p> <p>8 A. I was on a three-week leave of absence from</p> <p>9 work to come to Delaware to -- my mother was in the</p> <p>10 hospital. So it set my time back --</p> <p>11 Q. So you stopped?</p> <p>12 A. -- of accruing that year.</p> <p>13 Q. So you stopped in September 2006 working in</p> <p>14 North Carolina.</p> <p>15 A. Yes.</p> <p>16 Q. Returned to take care of your mother?</p> <p>17 A. Yes.</p> <p>18 Q. Is your mother doing okay, or does she have</p> <p>19 problems?</p> <p>20 A. She still has medical problems.</p> <p>21 Q. Are you presently employed anywhere?</p> <p>22 A. No, sir.</p> <p>23 Q. Have you been looking for a job?</p> <p>24 A. Yes, sir.</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

14	<p>1 Q. Where have you been looking?</p> <p>2 A. I've been looking for employment here in</p> <p>3 Delaware, in Maryland, in North Carolina.</p> <p>4 Q. Well, I thought the reason you returned from</p> <p>5 North Carolina to Delaware is to take care of your</p> <p>6 mom?</p> <p>7 A. I did.</p> <p>8 Q. But you're saying you're still going down there</p> <p>9 looking for jobs; in other words, you don't have to be</p> <p>10 with your mom any more?</p> <p>11 A. Well, because of circumstances with my family</p> <p>12 supporting with her being taken care of. I have a</p> <p>13 family member that's going to move closer to her.</p> <p>14 That's going to relieve some of my responsibilities of</p> <p>15 having to be there to take care of her.</p> <p>16 Q. What's your marital status?</p> <p>17 A. Divorced.</p> <p>18 Q. How many children do you have?</p> <p>19 A. Two.</p> <p>20 Q. What are their names?</p> <p>21 A. Shanice and Donnie.</p> <p>22 Q. You said Donnie is like 25, right?</p> <p>23 A. Yes.</p> <p>24 Q. How old is Shanice?</p>	16
15	<p>1 A. 14.</p> <p>2 Q. Where does she live?</p> <p>3 A. Where does Shanice live? She currently is in</p> <p>4 North Carolina.</p> <p>5 Q. With --</p> <p>6 A. With my son.</p> <p>7 Q. Now, you indicated you've been trying to get a</p> <p>8 job. Can you tell me the actual names of the places</p> <p>9 you've been trying? Have you submitted applications</p> <p>10 or something like that?</p> <p>11 A. I've just been going on line doing</p> <p>12 applications. I've applied here in Delaware with the</p> <p>13 State of Delaware. I've came -- I have had some</p> <p>14 interviews in the last month here in Delaware. I've</p> <p>15 applied for federal jobs. I've just been applying for</p> <p>16 jobs. I don't -- you know, I don't have a designated</p> <p>17 area I'm targeting on or designated place where I want</p> <p>18 to be. I'm just applying for jobs and going to</p> <p>19 school.</p> <p>20 Q. Are you going to school right now?</p> <p>21 A. I'm currently not in school. I just finished a</p> <p>22 block at Wilmington College in Dover, but I'm</p> <p>23 currently not enrolled at this time right now.</p> <p>24 Q. What's your course of study?</p>	17
	<p>1 A. Behavioral science.</p> <p>2 Q. When did you first start working for the State</p> <p>3 of Delaware?</p> <p>4 A. It's back in the eighties. Back in the</p> <p>5 eighties. I don't know the exact year, but back in</p> <p>6 the eighties because my son was born in '81. I was</p> <p>7 working with them prior to him being born.</p> <p>8 Q. Did you work for the State of Delaware solidly</p> <p>9 continuously through that period of time --</p> <p>10 A. No.</p> <p>11 Q. -- or has it been like you'd work for like ten</p> <p>12 months and then be off work for a while, then come</p> <p>13 back?</p> <p>14 A. No. When I first started working with the</p> <p>15 State of Delaware, I worked as a CNA. Then, when I</p> <p>16 chose to want to go to school to be an social worker</p> <p>17 or a -- behavioral science, then I pursued my jobs</p> <p>18 toward what I was going to school for.</p> <p>19 Q. CNA is a certified nursing assistant?</p> <p>20 A. Certified nursing assistant.</p> <p>21 Q. Where did you work?</p> <p>22 A. At the Delaware Hospital For the Chronically</p> <p>23 Ill in Smyrna.</p> <p>24 I said the eighties? I'm trying -- I</p>	



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">18</p> <p>1 Q. The actual name of the division you worked for.</p> <p>2 A. <b>The Division of Child Support Enforcement.</b></p> <p>3 Q. Okay. Yes. Is that the official title,</p> <p>4 Division of Child Support Enforcement?</p> <p>5 A. <b>To the best of my knowledge it is.</b></p> <p>6 Q. When did you start working for them?</p> <p>7 A. <b>In 2000. I don't recall. I think it was</b></p> <p>8 <b>October 2000.</b></p> <p>9 Q. And did you work continuously from 2000 to when</p> <p>10 you called in and said, you weren't coming back to</p> <p>11 work in 2005?</p> <p>12 A. <b>No, because I was out because of — are you</b></p> <p>13 <b>asking was there a break that I left them?</b></p> <p>14 Q. Yes. Was there a break?</p> <p>15 A. <b>No. The only break was when I went out on</b></p> <p>16 <b>workman's comp, but that —</b></p> <p>17 Q. And that was when?</p> <p>18 A. <b>June of 2004.</b></p> <p>19 Q. And what was that from? Why did you go out on</p> <p>20 workman's comp in June 2004?</p> <p>21 A. <b>I was diagnosed with bilateral carpal tunnel.</b></p> <p>22 Q. What doctor diagnosed you with that?</p> <p>23 A. <b>Dr. Evan Crain.</b></p> <p>24 Q. What was Dr. Crain's recommendation to you</p>	<p style="text-align: right;">20</p> <p>1 unit because that's the need where they needed help.</p> <p>2 But as a specialist, you're qualified to work in</p> <p>3 actually any unit within the agency itself.</p> <p>4 Q. They hired you in the customer service unit.</p> <p>5 Tell us what the job duties of that function are.</p> <p>6 A. <b>Customer service unit, you're taking incoming</b></p> <p>7 <b>calls from clientele that the agency serves. You're</b></p> <p>8 <b>addressing their concerns, following up if need be</b></p> <p>9 <b>with the appropriate worker, that is, the case worker</b></p> <p>10 <b>on the case. You're processing documents and mailing</b></p> <p>11 <b>them out. You're updating information in the system</b></p> <p>12 <b>in regards to the information that you obtain from the</b></p> <p>13 <b>call that's coming in.</b></p> <p>14 Q. Does it require lot of computer, finger use?</p> <p>15 A. <b>Yes. Because, from the moment — you get like</b></p> <p>16 <b>a minute in between each call that you take. From the</b></p> <p>17 <b>moment that you answer the call, you start basically</b></p> <p>18 <b>keying in the conversation.</b></p> <p>19 Q. Is that everybody that works in the customer</p> <p>20 service unit?</p> <p>21 A. <b>Is that what everyone does in the customer</b></p> <p>22 <b>service unit?</b></p> <p>23 Q. Yes.</p> <p>24 A. <b>That's what everyone does, but there are some</b></p>
<p style="text-align: right;">19</p> <p>1 regarding work?</p> <p>2 A. <b>He agreed for me to work but with limitations,</b></p> <p>3 <b>no repetitive use of my hands. Because I was in a</b></p> <p>4 <b>customer service unit, it consisted of keying. So he</b></p> <p>5 <b>put limitations on how many hours a day I could key.</b></p> <p>6 Q. Were you able to work with those modifications?</p> <p>7 A. <b>I could have, but the Division of Child</b></p> <p>8 <b>Support—I was out of work. I had surgery on both</b></p> <p>9 <b>hands. I had to have surgery on both hands. But</b></p> <p>10 <b>prior to that, I was out of work because, I guess,</b></p> <p>11 <b>they couldn't accommodate to put me somewhere else in</b></p> <p>12 <b>the agency to adhere to the doctor's recommendations.</b></p> <p>13 Q. Now, you indicated the unit you were in was</p> <p>14 called customer service, is that right?</p> <p>15 A. <b>Customer service unit.</b></p> <p>16 Q. Are there a number of customer service units</p> <p>17 A. <b>Are there a number?</b></p> <p>18 Q. Yes?</p> <p>19 A. <b>There's one customer service unit in New</b></p> <p>20 <b>Castle.</b></p> <p>21 Q. Are there any in Kent and Sussex?</p> <p>22 A. <b>No, but when you're hired at Child Support,</b></p> <p>23 <b>you're hired as a child support specialist, which at</b></p> <p>24 <b>time of hire, I was placed in the customer service</b></p>	<p style="text-align: right;">21</p> <p>1 other individuals that have other duties where they</p> <p>2 are not on the phone as much as other individuals.</p> <p>3 Q. Okay. Well, within the customer service unit,</p> <p>4 is there a break down into subunits or something like</p> <p>5 that?</p> <p>6 A. <b>There — what do you mean break down?</b></p> <p>7 Q. Where you worked, how many people were in the</p> <p>8 same group as you, had the same supervisor?</p> <p>9 A. <b>Well, the overall unit itself is supervised by</b></p> <p>10 <b>the same supervisor.</b></p> <p>11 Q. Who's the supervisor?</p> <p>12 A. <b>Brenda Annand.</b></p> <p>13 Q. How many people report to Brenda Annand?</p> <p>14 A. <b>I think there was probably like 20 some people</b></p> <p>15 <b>in the unit. I don't know any exact amount of</b></p> <p>16 <b>employees in the instant.</b></p> <p>17 Q. Now, the customer service unit you indicated,</p> <p>18 are there different jobs within the customer service</p> <p>19 unit or different functions within the customer</p> <p>20 service unit?</p> <p>21 A. <b>Yes, there are some individuals in the customer</b></p> <p>22 <b>service unit that handle the constituent complaints</b></p> <p>23 <b>from the governor, which those are, I guess, viewing</b></p> <p>24 <b>the complaints that people write in to the governor</b></p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

22	<p>1 and, I guess, researching the case and getting back</p> <p>2 with that individual whether it be verbally or written</p> <p>3 in regards to the complaint. I know there's an</p> <p>4 individual in the unit that does that. There are</p> <p>5 assigned team leaders, I guess, you know, in the unit,</p> <p>6 which they kind of like oversee maybe -- in each</p> <p>7 assigned team leader oversees like maybe four or five</p> <p>8 people on their team.</p> <p>9 Q. So Brenda Annand is the supervisor of this</p> <p>10 group of approximately?</p> <p>11 A. She -- Brenda has been the supervisor. I</p> <p>12 forgot when she came on board as a supervisor, but</p> <p>13 prior to her was Joyce Updike and Dianne Walters.</p> <p>14 Brenda has been the supervisor in customer service</p> <p>15 unit -- I don't recall when she came in the unit, but</p> <p>16 she was not always my supervisor. In the end she was.</p> <p>17 Q. When you started with them in 2000, was she</p> <p>18 your supervisor?</p> <p>19 A. No, sir.</p> <p>20 Q. And you indicated that, in addition to this</p> <p>21 group of 20 people that report to Brenda, there are</p> <p>22 things called team leaders?</p> <p>23 A. Yes.</p> <p>24 Q. And how many team leaders were there?</p>	24	<p>1 July. One was in August. I think it was July 17 and</p> <p>2 August 9th.</p> <p>3 Q. All right.</p> <p>4 A. I don't remember the exact date, but one was in</p> <p>5 July and one was in August.</p> <p>6 Q. And what was your course of treatment after you</p> <p>7 had the surgery?</p> <p>8 A. Physical therapy.</p> <p>9 Q. And how long did that last?</p> <p>10 A. I guess four to six months.</p> <p>11 Q. Now, were you able to return to work after your</p> <p>12 surgery?</p> <p>13 A. I was with restriction, but Child Support would</p> <p>14 not let me return to work.</p> <p>15 Q. Did they indicate they had no available jobs</p> <p>16 with those restrictions?</p> <p>17 A. Yes, because I was told, because I was in the</p> <p>18 customer service unit, which I guess, not wanting to</p> <p>19 accommodate me, to put me somewhere else in the</p> <p>20 agency, I was basically told, because I was in the</p> <p>21 customer service unit, that most of my job functions</p> <p>22 require a lot of keying.</p> <p>23 Q. Now, what I'm going to ask you now is, one of</p> <p>24 your allegations is based on race, correct?</p>
23	<p>1 A. I think there was, like in the unit itself</p> <p>2 there's like four or five team leaders.</p> <p>3 Q. Who was your team leader?</p> <p>4 A. I had a team leader. His name was Calvin</p> <p>5 Parsons. Then I had a team leader. Her name was</p> <p>6 Darlene Jackson.</p> <p>7 Q. Who was your last team leader?</p> <p>8 A. Darlene Jackson.</p> <p>9 Q. Is she still there?</p> <p>10 A. No. She my understanding, she transferred</p> <p>11 to -- well, she transferred back to Georgetown and</p> <p>12 I -- I don't know where she is now, but I know she</p> <p>13 went back to Georgetown. When I returned to work from</p> <p>14 workman's comp, she wasn't there.</p> <p>15 Q. Well, after your workman's comp, you had</p> <p>16 surgery you indicated, right? I'm just trying to make</p> <p>17 sure I get this straight. In June 2004 is when you</p> <p>18 stopped working because of your bilateral carpal</p> <p>19 tunnel, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Then shortly thereafter did you have surgery?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember when your surgery was?</p> <p>24 A. I had a surgery July 17th. One surgery was in</p>	25	<p>1 A. Yes, sir.</p> <p>2 Q. Why don't you tell us, explain to us what that</p> <p>3 allegation is, what are you alleging happened because</p> <p>4 of your race?</p> <p>5 A. When I see preferential treatment, whether it's</p> <p>6 based off your gender, your race, your age, my</p> <p>7 allegation to race was because Ms. Annand showed</p> <p>8 preferential treatment towards the white employees</p> <p>9 versus the black employees, people of minorities.</p> <p>10 Q. When was that she did that?</p> <p>11 A. She's basically done that from day 1 since I</p> <p>12 came into the customer service unit.</p> <p>13 Q. But now, why don't you explain to us, what was</p> <p>14 it that you wanted that you indicated you did not get</p> <p>15 because of your race?</p> <p>16 A. Just like the career ladder -- Child Support</p> <p>17 has a career ladder. It would be that the white</p> <p>18 employees were always given preferential treatment as</p> <p>19 far as getting the necessary training for the career</p> <p>20 ladder versus people of color were not signed off by</p> <p>21 the supervisor to take those trainings. To actually</p> <p>22 make a statement and say to a white employee, well,</p> <p>23 the next test I'll make sure that you set in on the</p> <p>24 next test, and make sure they get the necessary</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">26</p> <p>1 training or whatever so they can set in on the next</p> <p>2 test. Ms. Annand would show preference with her voice</p> <p>3 tone and her actions when she would address concerns</p> <p>4 to white employees versus black employees. With black</p> <p>5 employees it was the loud harsh tone with the finger</p> <p>6 pointing in your face. With white employees it was</p> <p>7 honey or sweetie or something like that in a soft</p> <p>8 spoken tone.</p> <p>9 Q. As to you, what job opportunity, promotion, or</p> <p>10 whatever did you request that you did not get you</p> <p>11 think based on race?</p> <p>12 A. I have a daughter that has an illness.</p> <p>13 Q. What's that illness?</p> <p>14 A. She has asthma, chronic asthma, diabetes.</p> <p>15 Q. Type 2?</p> <p>16 A. I don't know what. Doctor just said diabetes</p> <p>17 to me.</p> <p>18 Q. Is she insulin dependent?</p> <p>19 A. No. I'm a diabetic. I'm not insulin dependent</p> <p>20 either.</p> <p>21 Q. Okay. And what was it you requested?</p> <p>22 A. My daughter's doctor had wrote a letter for me</p> <p>23 to be moved down close to Dover because I lived in</p> <p>24 Dover but worked in New Castle. And it had been</p>	<p style="text-align: right;">28</p> <p>1 necessary appointments that the doctor wanted her to</p> <p>2 go to.</p> <p>3 Q. Had that changed since when you first got the</p> <p>4 job with customer service in the Division of Child</p> <p>5 Support Enforcement in 2000 and had your daughter's</p> <p>6 situation changed or always been that situation?</p> <p>7 A. No. It had changed.</p> <p>8 Q. How had it changed?</p> <p>9 A. How did it change?</p> <p>10 Q. Mm-hmm.</p> <p>11 A. Her medical condition was worsening instead of</p> <p>12 getting better.</p> <p>13 Q. Do you recall when it started worsening?</p> <p>14 A. There was a letter that my daughter's doctor</p> <p>15 faxed into the job. I don't recall the exact date. I</p> <p>16 think it was in – I don't recall the exact date the</p> <p>17 doctor – maybe it's in here because I sent it to you.</p> <p>18 I don't recall the exact date. But my daughter's</p> <p>19 doctor had called to the job one day stating that she</p> <p>20 needed to see me because of some results that came</p> <p>21 back from testing. She faxed a letter in, which the</p> <p>22 letter stated that she wanted me to be moved closer to</p> <p>23 Kent County. I don't remember the exact state on the</p> <p>24 letter.</p>
<p style="text-align: right;">27</p> <p>1 discussed with Ms. Annand on repeated occasions, which</p> <p>2 each and every time it was discussed with her, I was</p> <p>3 told that was not going to happen. I was hired in the</p> <p>4 customer service unit, which I explained to her, I was</p> <p>5 hired as child support specialist, not just to be in</p> <p>6 the customer service unit. I know customer service</p> <p>7 unit is not housed in Kent County. Fully</p> <p>8 knowledgeable and aware of that. Was not asking for</p> <p>9 any preferential treatment. Just asking, if there was</p> <p>10 an opportunity that an opening would have come in Kent</p> <p>11 County, I would – wanted to have been considered for.</p> <p>12 Q. So what you were asking for, as I understand</p> <p>13 it, you were asking, if a customer service position</p> <p>14 opened in Dover, you'd like to be placed in that so</p> <p>15 you could be closer to your daughter?</p> <p>16 A. Not customer service because customer service</p> <p>17 is not in Dover.</p> <p>18 Q. I'm sorry.</p> <p>19 A. Specialist. If a specialist position became</p> <p>20 available, I just wanted to be considered for it so I</p> <p>21 could be in Dover and support the treatment plan that</p> <p>22 the doctor had for my daughter, knowing that my</p> <p>23 daughter's condition was worsening because I worked in</p> <p>24 New Castle and was not available to take her to the</p>	<p style="text-align: right;">29</p> <p>1 Q. Just so I understand what you told us, you told</p> <p>2 us that the customer service unit you know does not</p> <p>3 have a location in Dover, is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. But your position was you wanted any position</p> <p>6 that opened that you could be placed into, even though</p> <p>7 it wasn't in that unit, you'd like to get that –</p> <p>8 you'd like to be placed in it, correct?</p> <p>9 A. Just so I could have been closer to home. I</p> <p>10 wouldn't have cared if it was clerical. I didn't care</p> <p>11 what it was.</p> <p>12 Q. Did you on your own apply for positions?</p> <p>13 A. There were positions, sir, that became</p> <p>14 available but they were never posted to give me an</p> <p>15 opportunity or anyone else an opportunity to apply.</p> <p>16 Q. Now, what division and department were they</p> <p>17 with, these positions that opened?</p> <p>18 A. There were two child support specialists that</p> <p>19 opened in Kent County.</p> <p>20 Q. What unit were they with?</p> <p>21 A. Operations, which is case processing, which I</p> <p>22 had experience doing it. I did that eight months in</p> <p>23 Georgetown.</p> <p>24 Q. And you're saying those positions were not</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

30	<p>1 advertised?</p> <p>2 <b>A. They were not advertised.</b></p> <p>3 Q. Does Brenda Annand, does she have control over</p> <p>4 those jobs?</p> <p>5 <b>A. Does she have control over -- I don't think</b></p> <p>6 <b>that she has control over the jobs, no, sir.</b></p> <p>7 Q. So she couldn't give you that job anyway, could</p> <p>8 she? If one opened, could Brenda give you a job that</p> <p>9 opened in operations?</p> <p>10 <b>A. No. And I wasn't asking Brenda to give me any</b></p> <p>11 <b>job. I was asking overall the agency itself.</b></p> <p>12 <b>Documentation from my daughter's doctor that came</b></p> <p>13 <b>in -- it was not directly to Brenda Annand. It was</b></p> <p>14 <b>directed to the Division of Child Support Enforcement.</b></p> <p>15 Q. Can you tell me of an instance where Brenda</p> <p>16 Annand gave somebody in her unit, customer service,</p> <p>17 move or whatever they wanted because of their race?</p> <p>18 <b>A. Yes, sir.</b></p> <p>19 Q. Okay. Who would that be?</p> <p>20 <b>A. Sandy Rossi.</b></p> <p>21 Q. And?</p> <p>22 <b>A. Beth Orendorf. I don't know if these folks are</b></p> <p>23 <b>married or what -- and Elizabeth Price.</b></p> <p>24 Q. And what was it that she did for them?</p>	32
31	<p>1 <b>A. Those were individuals that came into the</b></p> <p>2 <b>division which were hired at child support after my</b></p> <p>3 <b>date of hire, which, for some mysterious reason, met</b></p> <p>4 <b>the qualifications for the career ladder.</b></p> <p>5 Q. So tell me what the career ladder is. I mean,</p> <p>6 when you were there, right before you resigned, what</p> <p>7 was your position or your rate or whatever? What was</p> <p>8 your pay rate?</p> <p>9 <b>A. I had pay grade ten.</b></p> <p>10 Q. And this career ladder, explain that to me.</p> <p>11 <b>A. Career ladder, it is a packet that the division</b></p> <p>12 <b>of child support, I guess, with the assistance of HR,</b></p> <p>13 <b>put together that stipulates necessary training and</b></p> <p>14 <b>requirements that you have to meet to test to go to</b></p> <p>15 <b>the next step, which would resolve -- in the next step</b></p> <p>16 <b>of pay, and the next step in your job title.</b></p> <p>17 Q. Okay. So when you say next step, would that be</p> <p>18 like an increase in pay grade?</p> <p>19 <b>A. Yes, sir.</b></p> <p>20 Q. Or would it be an increase in the steps within</p> <p>21 a pay grade?</p> <p>22 <b>A. It's a change of your position title, and it's</b></p> <p>23 <b>an increase in pay.</b></p> <p>24 Q. So now you say these people were hired after</p>	33

1 you?

2 **A. Yes, sir.**

3 Q. And they've advanced up the career ladder,

4 correct?

5 **A. Yes, sir.**

6 Q. And what is Sandy Rossi's race?

7 **A. White.**

8 Q. And what is Beth --

9 **A. White.**

10 Q. And Elizabeth Price?

11 **A. White.**

12 Q. Now, other than these three, were any other

13 people advanced up the career ladder?

14 **A. The only other person I know that advanced up**

15 **the career ladder is Carolyn Evans. She's black.**

16 Q. So Carolyn Evans was advanced up the career

17 ladder and she is African-American?

18 **A. Yes.**

19 Q. Anybody else that advanced up the career ladder

20 that you can recall?

21 **A. That I can't recall.**

22 Q. Now, did you request to advance up the career

23 ladder?

24 **A. I submitted my -- it's called the package you**

1 **have to submit. And I've submitted it three times**

2 **since I've been with child support and denied three**

3 **times.**

4 Q. Who makes the decision about the career ladder

5 move?

6 **A. My understanding is the decision is based --**

7 **you have to be referred by your supervisor. When I**

8 **was hired with child support in 2000, the career**

9 **ladder had just came into operation. Everyone was**

10 **given an opportunity, to my understanding, to complete**

11 **their applications. They were given necessary time at**

12 **work to complete their applications. Then it goes to**

13 **your supervisor or your supervisor, I guess, agrees**

14 **and signs off, if you meet the qualifications or the**

15 **requirements. And then like I guess it's submitted to**

16 **their panel that they have to review these**

17 **applications, along with your supervisor, making, you**

18 **know, the final say to say whether you meet the**

19 **requirements or have completed the necessary training**

20 **to go to the next step to take the test. There is a**

21 **test that they take.**

22 Q. Did you ever take the test?

23 **A. I was never given an opportunity.**

24 Q. So as I understand it, you get a recommendation

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">34</p> <p>1 from your supervisor. Then I guess you would get an 2 application form you fill in or something like that? 3 <b>A. Yes. There's necessary documents that you have 4 to submit of questions that you have to answer.</b> 5 Q. Did you do that? 6 <b>A. Yes, sir.</b> 7 Q. And then you gave them to your supervisor. 8 What did she do with them? 9 <b>A. What did she do with them? I guess they go 10 before the panel that they have to review these 11 applications.</b> 12 Q. Did they go before the panel? 13 <b>A. Yes. They were denied.</b> 14 Q. The panel denied them? 15 <b>A. The panel which is the -- the panel -- I don't 16 know who's on the panel, but I know the supervisor has 17 a lot of input as far as the applications and all and 18 then the information that's on your application and 19 then I guess, if all that is accepted, then you take a 20 test.</b> 21 Q. So the decision is made by a panel as you 22 understand it, and your supervisor has some input in 23 that, correct? 24 <b>A. Yes.</b></p>	<p style="text-align: right;">36</p> <p>1 <b>A. She showed preferential difference with black 2 and white employees, yes, she did.</b> 3 Q. Now, when you saw preferential treatment, could 4 you be more specific? And I'm going to ask you first 5 about you. In other words, where was a case where she 6 treated you differently because of your race as 7 opposed to she treated a white person better because 8 of their race. Like, for instance, was there an 9 incident where you requested time off and you didn't 10 get time off but a white employee did get time off or 11 something like that? 12 <b>A. I would interview a lot, and I always kept 13 myself abreast and always wanting to go to necessary 14 trainings to enhance my abilities. I would be denied 15 trainings that I wanted to go to versus the white 16 employee would be accepted to go to the training. A 17 lot of times she deny me from going to training 18 because I would miss a lot of time from work because 19 of my daughter's medical condition as well as myself. 20 I had a medical condition myself. But I since then 21 have had surgery to take care of my medical condition 22 that I had family medical leave -- I had family 23 medical leave for myself as well as my daughter. And 24 I was always told, you know, that I couldn't take the</b></p>
<p style="text-align: right;">35</p> <p>1 Q. Do you know what your supervisor told the panel 2 about you on those various occasions? 3 <b>A. No. No.</b> 4 Q. So one of your claims of discrimination is not 5 being advanced on the career ladder, correct? 6 <b>A. Yes, sir.</b> 7 Q. What are your other claims of discrimination? 8 <b>A. My other claims of discrimination?</b> 9 Q. Mm-hmm. 10 <b>A. Because, as I told you, Ms. Annand always 11 showed preferential treatment toward her white 12 employees versus her black employees.</b> 13 Q. Well, how many black employees reported to 14 Mrs. Annand? 15 <b>A. How many black employees report to Mrs. Annand?</b> 16 Q. Mm-hmm. 17 <b>A. I don't recall how many employees are in her 18 unit now. When I was -- let's see. When I was in her 19 unit -- when I was in her unit, it was probably about 20 13 blacks in the unit versus the -- there were a 21 couple of Hispanics and the rest white.</b> 22 Q. You're saying she treated all 13 of those 23 African-Americans differently than she treated the 24 whites?</p>	<p style="text-align: right;">37</p> <p>1 necessary trainings or something because of me being 2 out for the family medical leave. 3 Several interviews that I would go on, I 4 always had to bring her back documentation of where I 5 went for the interview, what time the interview 6 started, when the interview ended. That would never 7 happen with the white staff person. 8 Q. How is it you know that that would never happen 9 with the white staff person? 10 <b>A. Because I know when they went to interviews 11 that they didn't have -- they did not bring her back 12 documentation.</b> 13 Q. How do you know that? 14 <b>A. Pardon me.</b> 15 Q. How do you know that? 16 <b>A. Because I asked.</b> 17 Q. You asked the person that came back? 18 <b>A. I asked the person.</b> 19 Q. Did you miss a lot of time from work? 20 <b>A. I did.</b> 21 Q. Were you late coming to work? 22 <b>A. No. I was not late coming to work with -- you 23 know, would come to work when I was scheduled to be to 24 work with the exception of my daughter's illness and</b></p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

38	<p>1 my illness.</p> <p>2 Q. How much time did you lose from work because of</p> <p>3 your illnesses?</p> <p>4 A. My illnesses? Every month. Every month I knew</p> <p>5 that my problem I had -- I knew that every month I was</p> <p>6 going to be out of work at least two, sometimes three</p> <p>7 days.</p> <p>8 Q. Would you use sick leave?</p> <p>9 A. I use family medical, family medical leave.</p> <p>10 Q. Well, do you have any sick leave accrued that</p> <p>11 you could use it?</p> <p>12 A. When my sick leave was exhausted as well as my</p> <p>13 vacation, it was leave without pay. It was family</p> <p>14 medical leave without pay.</p> <p>15 Q. Well, did you put in for that family medical</p> <p>16 leave? Would you put in for it? Would you apply for</p> <p>17 it?</p> <p>18 A. Yes. I had to apply for it.</p> <p>19 Q. Was that given to you?</p> <p>20 A. The family medical leave?</p> <p>21 Q. Mm-hmm.</p> <p>22 A. Yes.</p> <p>23 Q. For your own personal problems you said you'd</p> <p>24 lose about three days a month, correct?</p>	40	<p>1 discussed very briefly initially that have been Bates</p> <p>2 stamped. And on page Bates stamped B0002 is your</p> <p>3 answer of the people that are witnesses that can</p> <p>4 attest to the alleged allegation against plaintiff in</p> <p>5 regards to claims of race discrimination or</p> <p>6 retaliation, failure to promote plaintiff. And you</p> <p>7 indicated a number of people, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What is Nicole Waters -- when did you work with</p> <p>10 her?</p> <p>11 A. When did I work with her.</p> <p>12 Q. Mm-hmm.</p> <p>13 A. I don't recall the exact date when Nicole came</p> <p>14 to Child Support because she was hired after myself</p> <p>15 and I only know the exact date when she left Child</p> <p>16 Support, but she left. I don't know the exact dates.</p> <p>17 I worked with Nicole at least two years, I would say.</p> <p>18 Q. Now, what information does she have regarding</p> <p>19 your claim of race discrimination.</p> <p>20 A. What information does she have?</p> <p>21 Q. Mm-hmm?</p> <p>22 A. She can attest to Ms. Annand showing</p> <p>23 preferential treatment with her white employees versus</p> <p>24 the black employees. She can attest to Ms. Annand</p>
39	<p>1 A. Yes, sir.</p> <p>2 Q. How many times would you lose a month for your</p> <p>3 daughter's medical problems?</p> <p>4 A. My daughter's time was pretty consistent.</p> <p>5 Probably two to three days per month for her.</p> <p>6 Q. So a total of up to six days per month were</p> <p>7 lost because of -- work days were lost because of</p> <p>8 either your medical problems or your daughter's</p> <p>9 medical problem?</p> <p>10 A. Yes.</p> <p>11 Q. So that was six days a month on average that</p> <p>12 you were not available for work in the customer</p> <p>13 service unit?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have the same situation when you worked</p> <p>16 for North Carolina Division of Child Support?</p> <p>17 A. Not with me. The same situation with my</p> <p>18 daughter. And then the family medical -- for my mom.</p> <p>19 Q. You indicated there was period of time in North</p> <p>20 Carolina you missed a three-week period?</p> <p>21 A. Yes.</p> <p>22 Q. Who was that for?</p> <p>23 A. My mother.</p> <p>24 Q. In front of you are the documents that we</p>	41	<p>1 yelling, pointing her finger, making the negative</p> <p>2 remarks to me, more or less to -- you know,</p> <p>3 intimidating you in front of your other co-workers and</p> <p>4 stuff.</p> <p>5 Q. Okay. And what about retaliation, what</p> <p>6 evidence can she give about retaliation?</p> <p>7 A. Well, she has seen Ms. Annand, you know, where</p> <p>8 she has, you know, yelled at me and pointing her</p> <p>9 finger and stuff.</p> <p>10 Q. No. But now I'm asking you about the</p> <p>11 retaliation. You indicate you have a claim for</p> <p>12 retaliation. In other words, you're claiming somebody</p> <p>13 did something to you because of something else you</p> <p>14 did.</p> <p>15 A. Oh. You want to know what Ms. Waters can say</p> <p>16 in regards to retaliation?</p> <p>17 Q. Yes.</p> <p>18 A. I don't know if she can elaborate on</p> <p>19 retaliation.</p> <p>20 Q. How about, could she give us any information on</p> <p>21 failure to promote plaintiff?</p> <p>22 A. Yes, she can.</p> <p>23 Q. And what would she say?</p> <p>24 A. That there is preferential treatment shown</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">42</p> <p>1 toward the white employees as far as meeting – you</p> <p>2 know, being provided with the necessary trainings that</p> <p>3 you have to meet in order to be considered for the</p> <p>4 career ladder.</p> <p>5 Q. Okay.</p> <p>6 A. There was preferential treatment showed with</p> <p>7 the white employees versus the black employees,</p> <p>8 employees of minority. She can attest to that.</p> <p>9 Q. What is Ms. Waters's race?</p> <p>10 A. Black.</p> <p>11 Q. And did she put in for career ladder</p> <p>12 advancement and was denied?</p> <p>13 A. I don't know.</p> <p>14 Q. What about Nancy Santana?</p> <p>15 A. She's Hispanic.</p> <p>16 Q. And what information does she have about race</p> <p>17 discrimination, your claim of race discrimination?</p> <p>18 A. She can attest that Ms. Annand showed</p> <p>19 preferential treatment towards her white employees</p> <p>20 versus her black employees. She can attest that, with</p> <p>21 the career ladder, that there is preferential</p> <p>22 treatment showed with the white employees versus the</p> <p>23 black employees.</p> <p>24 As far as retaliation, Ms. Santana is</p>	<p style="text-align: right;">44</p> <p>1 Q. How many times?</p> <p>2 A. If you went over all with me working at Child</p> <p>3 Support, sir, when I say several, I can say</p> <p>4 Ms. Annand's yelled at me over 50 some times.</p> <p>5 Q. Now, she's yelled at you over 50 times. What</p> <p>6 has she yelled at you about?</p> <p>7 A. Unnecessary things. It may be from me being</p> <p>8 away from my desk or many times, when I came back in</p> <p>9 for being out for my daughter's illness or my illness,</p> <p>10 she would yell at me telling me that I need to be at</p> <p>11 work. The other people in the unit have to hold up</p> <p>12 the fort because you're not here and...</p> <p>13 Q. So when she yelled at you this 50 times from</p> <p>14 the time you worked at Child Support, was it always</p> <p>15 about the job?</p> <p>16 A. Was it always about the job? Most of the time,</p> <p>17 it would be because of me being out because of my</p> <p>18 daughter's sickness and my illness.</p> <p>19 Q. Is it true that Ms. Annand would tell you that,</p> <p>20 if you are not at your job, other people have to do your</p> <p>21 work for you?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Would other employees sometimes be angry about</p> <p>24 the fact that you were not there or you were missing</p>
<p style="text-align: right;">43</p> <p>1 aware and knows that I do have a discrimination</p> <p>2 claim – complaint against Child Support, and she can</p> <p>3 attest to Ms. Annand's actions of getting in my face,</p> <p>4 yelling, pointing her finger.</p> <p>5 Q. Okay. When Ms. Annand would get in your face</p> <p>6 and point her finger at you, would she use racial</p> <p>7 epithets to describe you?</p> <p>8 A. Say that again, please.</p> <p>9 Q. You've indicated a number of times that</p> <p>10 Ms. Annand would get in your face and point her finger</p> <p>11 at you and yell. When she was doing that, she was she</p> <p>12 using racial slurs against you?</p> <p>13 A. She said, "You people."</p> <p>14 Q. In what context did she say, "You people"?</p> <p>15 A. In what context would she say, "You people"?</p> <p>16 Q. Yes, ma'am?</p> <p>17 A. Explain to me that you mean.</p> <p>18 Q. Well, you took that as being a pejorative term,</p> <p>19 "you people."</p> <p>20 A. Mm-hmm.</p> <p>21 Q. I'm asking you to explain why that is. Put it</p> <p>22 in the context. You said she put got in your face and</p> <p>23 she yell at you. How many times has that happened?</p> <p>24 A. Several.</p>	<p style="text-align: right;">45</p> <p>1 time?</p> <p>2 A. If they were, I don't recall. In the customer</p> <p>3 service there was really not work that I'm leaving</p> <p>4 behind for someone else to do. It just makes someone</p> <p>5 get more calls and than if I was there that day. It's</p> <p>6 not like there was paperwork. Somebody has to do it</p> <p>7 or something.</p> <p>8 Q. But you will agree with me that -- how many</p> <p>9 people in the customer service unit when you were</p> <p>10 there answered the phones, took calls about child</p> <p>11 support? How many people doing just what you were</p> <p>12 doing?</p> <p>13 A. The people in the unit, 15, 20 some people in</p> <p>14 the unit.</p> <p>15 Q. And if you're not there, then somebody else has</p> <p>16 to take the calls that you would have been able to</p> <p>17 take had you been there, correct</p> <p>18 A. That's true.</p> <p>19 Q. So somebody else, co-employees are getting more</p> <p>20 work to do because you're not there.</p> <p>21 A. That's true.</p> <p>22 Q. Is that understandable that someone would be</p> <p>23 angry about that?</p> <p>24 A. It may be understandable that someone would be</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

46	<p>1 angry, but when I had family medical leave, that is a 2 federal benefit. I have no control over my illnesses 3 or my daughter's illness. And each and every time I 4 missed work, the appropriate documentation was 5 provided. I could see if I was abusing time or 6 something like that, not actually being sick and not 7 coming, but I had documentation for the medical 8 reasons.</p> <p>9 Q. Now, tell me about what your claim of 10 retaliation is.</p> <p>11 A. Well, Ms. Annand has repeatedly said to me that 12 my attendance was going to affect my performance 13 reviews because of me having to be out of work because 14 of my daughter's illness and my illness. I was 15 basically told that up front.</p> <p>16 Q. Did Ms. Annand or anyone take action against 17 you because you filed an EEOC complaint?</p> <p>18 A. I was treated different. A whole -- I was 19 treated in a different way after I did that versus the 20 negative way I was being treated before that; it got 21 worse after that.</p> <p>22 Q. Now, when you say it got worse, how did it get 23 worse?</p> <p>24 A. Everything that I did it seemed like it was</p>	48	<p>1 A. In Philadelphia I think it was in October of 2 2004. I don't remember the exact date.</p> <p>3 Q. Let me show you a document and ask you if this 4 refreshes your memory.</p> <p>5 A. Yes.</p> <p>6 Q. What's the date on that?</p> <p>7 A. January 2005.</p> <p>8 Q. That's the date you filed your charge of 9 discrimination?</p> <p>10 A. Yes. With the Philadelphia...</p> <p>11 Q. All right. Now, did you work between January 12 12, 2005?</p> <p>13 A. Did I work?</p> <p>14 Q. At the Division of Child Support?</p> <p>15 A. I worked at the Division of Child Support until 16 August of 2005.</p> <p>17 Q. So you say the things -- I'm going to ask you 18 to be as specific as possible. After you filed that 19 complaint January 12, 2005, what actions were taken 20 against you you believe because you filed that EEOC 21 action?</p> <p>22 A. What actions were taken against me?</p> <p>23 Q. Mm-hmm.</p> <p>24 A. With Ms. Annand or Child Support?</p>
47	<p>1 just never right in her vision. Anything to take a 2 pen and piece of paper to just write anything up on 3 me. I started applying more for jobs, trying to 4 interview out of the agency itself. I was not given 5 the merit benefit of the time to attend the interview. 6 I was told that if I go to a job interview from 7 home -- I live in Dover, work in New Castle. If I had 8 an interview at 8:30 in the morning, I was told by 9 Ms. Annand that I had to come up to New Castle and 10 sign in and then drive back down to Dover to the 11 interview. I was not given the time to go, you know, 12 to any state interviews or anything, and when I did go 13 to interviews, I had to bring being documentation back 14 of where I went and what time it began, what time it 15 ended.</p> <p>16 I noticed after I did file the complaint, 17 the negative statements and the negative treatment 18 from Ms. Annand became a bit more intense, you know, 19 than what I had tolerated prior to filing the 20 complaint.</p> <p>21 Q. Do you recall when you filed the complaint?</p> <p>22 A. Do I recall?</p> <p>23 Q. Yeah. When you filed the EEOC charge of 24 discrimination?</p>	49	<p>1 Q. Anyone. If you claim somebody is retaliating 2 against you for filing the EEOC action, what was it?</p> <p>3 A. Well, as I explained to you, Ms. Annand became 4 very rude toward me. Her total reaction just changed 5 toward me in the unit itself. There was really 6 nothing nice that she could say to me. When she did 7 voice or address something to me, it was in a 8 negative, rude, you know, tone with the finger 9 pointing, you know, in your face thing, snatching 10 papers from me. Stuff like that started to occur.</p> <p>11 Q. Now, during that period of time, from January 12 2005 until you resigned in August, was there anything 13 you requested or wanted from your employer that you 14 didn't get because you filed an EEOC action?</p> <p>15 A. I'm not saying there was something that I 16 didn't get because I filed the EEOC action. Just like 17 I made the request, you know, to go to Kent County, 18 I'm not saying that I didn't get it because I filed 19 the EEOC action. But as far as why I wasn't given an 20 opportunity to go to Kent County, knowing that I 21 wasn't asking for any preferential treatment, is 22 because of my daughter's medical condition and then to 23 know that positions became available and I wasn't 24 considered for them.</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">50</p> <p>1 Q. Well, we went over that before, remember? And</p> <p>2 I think you told me that Ms. Annand really has no</p> <p>3 control over that; she can't give you a job outside of</p> <p>4 her own unit, right?</p> <p>5 A. She has no control over that, but when my</p> <p>6 daughter's doctor first sent in the letter and I</p> <p>7 discussed it with Ms. Annand, she just based that</p> <p>8 decision off herself to tell me, no, you're not going</p> <p>9 anywhere, you're just going to stay here in the</p> <p>10 customer service unit, instead of actually following</p> <p>11 up the protocol and the chain of command that this</p> <p>12 request has been made by this employee's child's</p> <p>13 physician and, you know, maybe it could have been</p> <p>14 considered. She didn't do that. She didn't do</p> <p>15 anything with it. She just made her own decision and</p> <p>16 told me I wasn't going anywhere.</p> <p>17 Q. Could you have gone over her head and made the</p> <p>18 request above her head?</p> <p>19 A. I probably could have, but I followed chain of</p> <p>20 command which was to go and discussion it with my</p> <p>21 supervisor.</p> <p>22 Q. After you did that, did you say, "Well, I'd</p> <p>23 like you to pass this on"?</p> <p>24 A. Did I say that to Ms. Annand?</p>	<p style="text-align: right;">52</p> <p>1 preferential treatment toward the white employees</p> <p>2 versus the black. He can attest that, with the career</p> <p>3 ladder, that the blacks were denied the career ladder</p> <p>4 in the unit versus the whites were always accommodated</p> <p>5 with the necessary training or whatever they needed to</p> <p>6 adhere to the career ladder.</p> <p>7 Q. And retaliation, failure to promote, same</p> <p>8 thing?</p> <p>9 A. Yes, sir.</p> <p>10 Q. How about Earnie Eggleston.</p> <p>11 A. Earnie can attest that she shows preferential</p> <p>12 treatment with her white employees versus the black.</p> <p>13 He can attest to the career ladder, that the whites</p> <p>14 are given preferential in getting the training or</p> <p>15 whatever to go up to the next step with the career</p> <p>16 ladder versus the blacks aren't.</p> <p>17 Q. Now, are any of these individuals that you</p> <p>18 listed here still working at Division of Child Support</p> <p>19 Enforcement?</p> <p>20 A. I know Nicole Waters doesn't work there because</p> <p>21 she left before I left. To the best of my</p> <p>22 knowledge -- well, Calvin Parson, he doesn't work</p> <p>23 there because he left before I left.</p> <p>24 Q. How about Earnie Eggleston?</p>
<p style="text-align: right;">51</p> <p>1 Q. Right.</p> <p>2 A. No, because, to me, as her supervisor, it</p> <p>3 should have been her responsibility to have the</p> <p>4 knowledge and know to do that herself without me</p> <p>5 having to ask her to do that.</p> <p>6 Q. What information regarding race discrimination,</p> <p>7 retaliation, or failure to promote can we get from</p> <p>8 Tomika Lester?</p> <p>9 A. Tomika Lester can basically elaborate that</p> <p>10 Ms. Annand shows preferential treatment toward the</p> <p>11 white employees versus the employees that are black or</p> <p>12 minorities, attest that, with the career ladder</p> <p>13 promotions, that blacks are denied opportunity to</p> <p>14 obtain the necessary training or whatever versus the</p> <p>15 whites always would meet that.</p> <p>16 Q. And how about retaliation?</p> <p>17 A. She can attest that Ms. Annand has told me,</p> <p>18 because of my absences, because of my illness and my</p> <p>19 daughter's illness, that she said it was going to</p> <p>20 affect my performance review.</p> <p>21 Q. Okay. What about Calvin Parson, what</p> <p>22 information does he have about discrimination,</p> <p>23 retaliation, failure to promote?</p> <p>24 A. He can attest that Ms. Annand showed</p>	<p style="text-align: right;">53</p> <p>1 A. I assuming Earnie is still there. I'm assuming</p> <p>2 Tomika is there, and Ms. Santana, I know she is still</p> <p>3 there to the best of my knowledge.</p> <p>4 Q. All right. Now, did you have performance</p> <p>5 reviews while you worked at the Division of Child</p> <p>6 Support Enforcement?</p> <p>7 A. Delaware?</p> <p>8 Q. Yes.</p> <p>9 A. I had two.</p> <p>10 Q. And how were those reviews? I mean how were</p> <p>11 those evaluations?</p> <p>12 A. Those evaluations contained negative comments.</p> <p>13 Q. Negative meaning things that are not good about</p> <p>14 you?</p> <p>15 A. Right.</p> <p>16 Q. And are you saying they are not true?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know what some of them are based on,</p> <p>19 these negative comments are based on?</p> <p>20 A. One evaluation -- I don't know which one you</p> <p>21 have in front of you. The one evaluation she states</p> <p>22 that she got a complaint from a client, which the</p> <p>23 complaint stated negative statements that were made by</p> <p>24 this client. In the customer service unit your calls</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

54	<p>1 are monitored and they are recorded. She shared the</p> <p>2 complaint with me, which I denied the allegations. I</p> <p>3 would -- said that I called somebody's dad a deadbeat</p> <p>4 dad or something of that nature. I don't talk to</p> <p>5 individuals like that, sir.</p> <p>6 And in the complaint the client had</p> <p>7 recommended for me to be placed out of the customer</p> <p>8 service unit, performing a job duty, as they said,</p> <p>9 processing payments or taking a training, maybe anger</p> <p>10 management or something of that nature, which these</p> <p>11 are trainings that are in our SPO training manual,</p> <p>12 exactly stating the trainings as they're titled in the</p> <p>13 SPO manual.</p> <p>14 Some of the allegations that were made in</p> <p>15 the customer's complaint would -- someone calling in</p> <p>16 to the division, sir, they are not going to even have</p> <p>17 knowledge to even know some of the things that were</p> <p>18 said in the complaint. Like the lady said she had</p> <p>19 asked me had a check posted to her account. And the</p> <p>20 reply, what the client said I said, no. But then the</p> <p>21 client replied and said, "Well, if Jackie had looked,</p> <p>22 she would have seen that a payment had posted on this</p> <p>23 date and was ready to go out." A client is not going</p> <p>24 to know that, you know, to call into the Division of</p>	56	<p>1 A. Yes.</p> <p>2 Q. How do they relate to your claims?</p> <p>3 A. How -- how does Ms. Santana's relate to my</p> <p>4 claim?</p> <p>5 Q. Well, first of all, do you know what</p> <p>6 Ms. Santana is claiming?</p> <p>7 A. No. I know she has a claim in regards to race</p> <p>8 discrimination because of the preferential treatment</p> <p>9 that is given to the white employees versus the black</p> <p>10 employees in the unit and with the career ladder, how</p> <p>11 the white employees are accommodated and provided the</p> <p>12 necessary training or whatever for the career ladder</p> <p>13 where the blacks are denied or not given the</p> <p>14 opportunity to get that necessary training.</p> <p>15 Q. Do you know if the people that are moving up</p> <p>16 the career ladder, do you have the same educational or</p> <p>17 background that they do?</p> <p>18 A. I have a better educational background,</p> <p>19 experience background than they do.</p> <p>20 Q. What about the complaint filed with the</p> <p>21 Industrial Accident Board by Calvin Parson?</p> <p>22 A. I was subpoenaed to attest to his allegations.</p> <p>23 I did not get to attend because of the passing of my</p> <p>24 uncle and his funeral was that day. But to the best</p>
55	<p>1 Child Support. Only you sitting there at the terminal</p> <p>2 and seeing what has posted on the account or whatever,</p> <p>3 you're going to know that as the employee, but not a</p> <p>4 client calling into the Division of Child Support is</p> <p>5 not going to know that.</p> <p>6 Q. In any event, at these evaluations, were you</p> <p>7 given an opportunity to respond if you didn't agree</p> <p>8 with them?</p> <p>9 A. I was given the opportunity to respond, but I</p> <p>10 was told by Ms. Annand it did not make a difference</p> <p>11 what my response was going to be because her rating</p> <p>12 was not going to change.</p> <p>13 Q. But did you do whatever your response was? Did</p> <p>14 you do your comment? You're allowed to put comments</p> <p>15 in, correct?</p> <p>16 A. Pardon me?</p> <p>17 Q. You're allowed to put comments if you don't</p> <p>18 agree with the evaluation, correct?</p> <p>19 A. Yes, you are.</p> <p>20 Q. Did you put any comments in?</p> <p>21 A. No, I didn't.</p> <p>22 Q. Now, you in your answers to interrogatories on</p> <p>23 B00014, you talk about the charge of discrimination</p> <p>24 filed by Nancy Santana. You see that?</p>	57	<p>1 of my knowledge, I know that his complaint consisted</p> <p>2 of the racism that was displayed by Ms. Annand. As</p> <p>3 far as what else was in his complaint, I have no</p> <p>4 knowledge. I was not there. But I know that</p> <p>5 Ms. Annand showing preferential treatment with the</p> <p>6 white employees versus the back employees.</p> <p>7 Q. But was that a matter that was before the</p> <p>8 Industrial Accident Board?</p> <p>9 A. Pardon me?</p> <p>10 Q. Was that a workman's comp claim Mr. Parson had?</p> <p>11 A. I don't know what his claim was based off of.</p> <p>12 Q. What was your understanding of why you were</p> <p>13 subpoenaed to come as a witness there?</p> <p>14 A. To -- the only thing I could have witnessed</p> <p>15 would be to attest to the negative treatment toward</p> <p>16 Mr. Parson as by Ms. Annand and the preferential</p> <p>17 treatment shown toward the white employees versus the</p> <p>18 blacks.</p> <p>19 Q. What was Mr. Parson claiming his workers'</p> <p>20 compensation claim was, do you know?</p> <p>21 A. I have no knowledge.</p> <p>22 Q. Was it bad back, do you know? I mean, was he</p> <p>23 trying to get out work? I mean, he said he couldn't</p> <p>24 work any more or something or injured or what?</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">58</p> <p>1 A. I didn't attend.</p> <p>2 Q. But you knew Mr. Parson, didn't you?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what his problem was before he went</p> <p>5 to workers' comp? Did he have a physical problem on</p> <p>6 the job?</p> <p>7 A. I have no knowledge, sir.</p> <p>8 Q. You understand that generally at the Industrial</p> <p>9 Accident Board, not being treated well by your</p> <p>10 employer is not a basis of a workman's compensation</p> <p>11 claim?</p> <p>12 A. Right.</p> <p>13 Q. Usually it's something like you were injured on</p> <p>14 the job or something like that?</p> <p>15 A. Right.</p> <p>16 Q. Do you know if that was what Mr. Parson was</p> <p>17 alleging?</p> <p>18 A. I have no knowledge of what he was alleging as</p> <p>19 far as workman's comp.</p> <p>20 Q. Did you file a workman's comp matter?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. It was done in 2004.</p> <p>24 Q. It was about your hands?</p>	<p style="text-align: right;">60</p> <p>1 Q. Now, in addition to that, did you apply for</p> <p>2 disability pension?</p> <p>3 A. June 23rd I went to HR to apply for disability</p> <p>4 pension. This is prior to going out on workman's</p> <p>5 comp.</p> <p>6 Q. What year did you apply for your disability</p> <p>7 pension?</p> <p>8 A. Let me make sure we are -- the disability that</p> <p>9 I applied for or the disability that I was eligible</p> <p>10 for, the supplemental disability prior to going out on</p> <p>11 workman's comp.</p> <p>12 Q. Did you apply for a state disability pension?</p> <p>13 A. I went to -- I went to the HR office to apply</p> <p>14 on June 23rd for a supplemental disability. It was</p> <p>15 explained to me that this disability -- I would</p> <p>16 continue to get my wages, pending whether the</p> <p>17 workman's comp carrier was either going to deny or</p> <p>18 accept my claim.</p> <p>19 Q. Okay.</p> <p>20 A. I went to the HR rep, Alice Bailey's office.</p> <p>21 When I got to her office that day, she started to</p> <p>22 elaborate when I came into her office how can I relate</p> <p>23 my injuries to the job? How can you say that you</p> <p>24 obtained this carpal tunnel here? Elaborated in</p>
<p style="text-align: right;">59</p> <p>1 A. Yes.</p> <p>2 Q. Carpal tunnel?</p> <p>3 A. Carpal tunnel.</p> <p>4 Q. And what eventually happened with that matter?</p> <p>5 A. What happened with it?</p> <p>6 Q. Mm-hmm.</p> <p>7 A. I just recently received a small computation</p> <p>8 from the carrier.</p> <p>9 Q. In other words, that you were granted workman's</p> <p>10 compensation benefits --</p> <p>11 A. Yes.</p> <p>12 Q. -- for your repetitive motion injury?</p> <p>13 A. Yes.</p> <p>14 Q. Now, were there any jobs in the customer</p> <p>15 service unit in which you were working at when you</p> <p>16 went off of workers' comp that was available to you</p> <p>17 with the limitations that your doctor wanted you to</p> <p>18 work under?</p> <p>19 A. Were there any jobs in the customer service</p> <p>20 unit?</p> <p>21 Q. Mm-hmm.</p> <p>22 A. Not in the customer service unit, but there</p> <p>23 were other jobs available within the agency itself in</p> <p>24 another unit.</p>	<p style="text-align: right;">61</p> <p>1 stating that there was an HR tech that I'm assuming</p> <p>2 had an injury claimed with carpal tunnel and submitted</p> <p>3 it and she said the claim was denied. I responded to</p> <p>4 her, "I didn't come to your office for this. And as</p> <p>5 far as you setting here dictating like you're an</p> <p>6 attorney or doctor to me to tell me how I have</p> <p>7 sustained the injury," I said, "Here's my attorney's</p> <p>8 name," and gave her the attorney's phone number. I</p> <p>9 brought a concern to her when I looked at the injury</p> <p>10 report that day -- it was my -- it was incorrect</p> <p>11 address on the injury report. And I informed that</p> <p>12 that address was incorrect. She started yelling at</p> <p>13 me. She told me that I had to leave her office. I</p> <p>14 had drove a state car from the Child Support office</p> <p>15 over to her office. She told me I had to take the car</p> <p>16 back and get off state premises.</p> <p>17 Q. Who is this that told you this?</p> <p>18 A. Alice Bailey.</p> <p>19 LaTanya Warren's office, who was down the</p> <p>20 hall from Ms. Bailey's at that time, heard the</p> <p>21 commotion down there in her office, and she got up and</p> <p>22 came down to Ms. Bailey's office I guess to more or</p> <p>23 less see what was going on because the lady was just</p> <p>24 sitting there yelling at me. When I told her I had a</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

62	<p>1 lawyer, she said she had nothing further to say to me.</p> <p>2 But my intent was I was sent to go to her office by</p> <p>3 Ms. Annand to complete the documents for this</p> <p>4 supplemental disability which is supposed to be</p> <p>5 granted prior to the workman's comp carrier picking up</p> <p>6 my claim. And I never received that benefit because</p> <p>7 she told me to get out of her office and leave state</p> <p>8 property when I told her I had an attorney because she</p> <p>9 was setting there like interrogating me, you know,</p> <p>10 asking me questions, how are you going to say you got</p> <p>11 in carpal tunnel here? And I said, I told her, "I</p> <p>12 didn't come to your office for that. I came to fill</p> <p>13 out the necessary documents." And I just told her,</p> <p>14 "If you need to know anything about this workman's</p> <p>15 comp injury, here's my lawyer's name and number, and</p> <p>16 you can call him." And that's what I gave her.</p> <p>17 Q. You did apply for the supplemental short-term</p> <p>18 disability?</p> <p>19 A. Yes. That was in 2005.</p> <p>20 Q. Same time you went off on workers' comp, right?</p> <p>21 A. I was already out on workman's comp.</p> <p>22 Q. All right. In any event, you also applied for</p> <p>23 disability pension, long-term disability pension?</p> <p>24 A. Yes.</p>	64	<p>1 Q. Yeah. 11 years, 1 month, and 15 days, you see</p> <p>2 right here?</p> <p>3 A. Yes.</p> <p>4 Q. You see next to it there's a description of</p> <p>5 periods of time you worked for these different</p> <p>6 agencies, correct?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. There's a number of workman's comp with pay,</p> <p>9 correct?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. And in other words, you've had one, two, three,</p> <p>12 four, five, six workman's compensation claims while</p> <p>13 you worked for the State, correct?</p> <p>14 A. I had a workman's comp claim at the Delaware</p> <p>15 Hospital for Chronically Ill. You're going to see</p> <p>16 that one, and then you are going to see the workman's</p> <p>17 comp claim with the Child Support. Those are the only</p> <p>18 workman's comp claims I've had since working with the</p> <p>19 State.</p> <p>20 Q. Okay. Well, do you recall what the first</p> <p>21 workman's comp claim was when you were working at</p> <p>22 DHCI?</p> <p>23 A. Yes.</p> <p>24 Q. What was that for?</p>
63	<p>1 Q. That was denied by the pension board?</p> <p>2 A. Yes.</p> <p>3 Q. This is one of the forms you signed in that</p> <p>4 pension application. Let me just show it to you.</p> <p>5 It's signed by you. Is that your signature down</p> <p>6 there.</p> <p>7 A. Yeah. Yes.</p> <p>8 Q. This is a statement of credible service for</p> <p>9 you, correct.</p> <p>10 A. Yes.</p> <p>11 Q. And it shows that you first started working on</p> <p>12 December 1st, 1977.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Do you recall that.</p> <p>15 A. When you asked me when I started working for</p> <p>16 the state, I said the eighties, but then I said the</p> <p>17 seventies because worked at Stokely in Georgetown.</p> <p>18 Q. Does this refresh your memory that it was 1977</p> <p>19 you started?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. You see all these, even though you</p> <p>22 started working in 1977, what was the total amount of</p> <p>23 credible service you had?</p> <p>24 A. With the State?</p>	65	<p>1 A. It was -- I walked into a patient's room. The</p> <p>2 water pitcher had been knocked over the by patient.</p> <p>3 And I slipped and fell in the water. I had surgery on</p> <p>4 my ankle. They had to reconstruct my ankle.</p> <p>5 Q. Then you had another workman's comp in '83 at</p> <p>6 DHCI. Do you recall what that was about?</p> <p>7 A. It's all with the ankle. That was the only one</p> <p>8 I've ever had at DHCI.</p> <p>9 Q. You were out three years with the ankle?</p> <p>10 A. With DHCI. Those periods in there with the</p> <p>11 Delaware Hospital For Chronically Ill only related to</p> <p>12 my ankle.</p> <p>13 Q. All right.</p> <p>14 A. I had to have repeated surgeries on it.</p> <p>15 Q. In '85 you had a workers' comp leave of</p> <p>16 absence. Do you recall what that was for?</p> <p>17 A. Is that a Delaware Hospital for the Chronically</p> <p>18 Ill?</p> <p>19 Q. It could be.</p> <p>20 A. Well, the only workman's comp I've ever had was</p> <p>21 with my ankle and then with the carpal tunnel.</p> <p>22 Q. Do you remember then you had another 12</p> <p>23 months -- okay. Wait a second. DMR, that was</p> <p>24 Stokely?</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">66</p> <p>1 A. Mm-hmm.</p> <p>2 Q. 2000?</p> <p>3 A. I didn't have a workman's comp there.</p> <p>4 Q. Were you on workman's comp in 2004 and 2005?</p> <p>5 A. Was I?</p> <p>6 Q. Yeah. Did you have a workman's comp claim in</p> <p>7 2004 and 2005?</p> <p>8 A. With Child Support.</p> <p>9 Q. Right. What was the one in 2004 about?</p> <p>10 A. The only workman's comp I've had with Child</p> <p>11 Support was with the carpal tunnel. I've never had</p> <p>12 any workman's comp claim with Child Support.</p> <p>13 Q. See, I thought you went off work for workers'</p> <p>14 comp in 2005, but that's not correct; you went out in</p> <p>15 2004?</p> <p>16 A. 2004.</p> <p>17 Q. But your surgery wasn't done until 2005?</p> <p>18 A. No. I had both surgeries in 2004.</p> <p>19 Q. Do you know who the division director of the</p> <p>20 Division of Child Support Enforcement is?</p> <p>21 A. Chuck Hayward.</p> <p>22 Q. What's his race?</p> <p>23 A. Black.</p> <p>24 Q. When you saw or you indicate you saw these</p>	<p style="text-align: right;">68</p> <p>1 Q. Ms. Annand, you talked to her supervisor</p> <p>2 Ms. Walters?</p> <p>3 A. I talked -- I had opportunity to meet with</p> <p>4 Ms. Walters and address my concerns about Ms. Walters.</p> <p>5 Q. What race is Ms. Walters?</p> <p>6 A. She's white.</p> <p>7 Q. And who does she report to?</p> <p>8 A. Ms. Walters's supervisor I'm assuming would be</p> <p>9 Chuck Hayward. I don't --</p> <p>10 Q. All right. So you discussed it with her. What</p> <p>11 happened after you discussed it with Ms. Walters?</p> <p>12 A. Well, when -- the day I discussed it with her,</p> <p>13 she stated that she had, you know, complaints about</p> <p>14 Ms. Annand with the same thing I was addressing, and</p> <p>15 she was working on it, going to address it. But she</p> <p>16 also ended in closing saying that Ms. Annand yells</p> <p>17 because she has a hearing impairment. I says, "Well,</p> <p>18 if she has a hearing impairment, I don't see her</p> <p>19 yelling at the white employees like that." And I</p> <p>20 said, "Even if she has a hearing impairment, it has</p> <p>21 nothing to do with this. Your hearing has nothing to</p> <p>22 do with pointing your finger up in somebody's face."</p> <p>23 Q. Are you saying Ms. Annand has never pointed her</p> <p>24 finger at a Caucasian employee?</p>
<p style="text-align: right;">67</p> <p>1 various preferential treatments, did you complain to</p> <p>2 anyone?</p> <p>3 A. To my -- I had called -- I spoke with</p> <p>4 Ms. Loretta Brase in regards to my concerns. I spoke</p> <p>5 with a Mr. Craig Chambers, which he explained to me</p> <p>6 that he was the EEOC for the State and referred me to</p> <p>7 Ms. Rossi, which he stated that she was the EEOC</p> <p>8 person for our agency itself, our labor relations.</p> <p>9 Q. Mm-hmm.</p> <p>10 A. I had spoke with Ms. Annand's supervisor Dianne</p> <p>11 Walters in regards to -- when I talked with her, it</p> <p>12 was in regards to Ms. Annand yelling and the finger</p> <p>13 pointing that any face, which I let her know that</p> <p>14 appears threatening to me and I will not tolerate it.</p> <p>15 She elaborated and stated that Ms. Annand had a</p> <p>16 hearing impairment. I replied and told her that I</p> <p>17 disagreed with her because, if you have a hearing</p> <p>18 impairment, which I have a family member that has a</p> <p>19 hearing impairment, you're not going to show that</p> <p>20 difference in treatment versus to a black person</p> <p>21 versus a white. But if you have a hearing impairment,</p> <p>22 if you're going to yell, you're going to yell at them</p> <p>23 whether they are black or white. But that wasn't the</p> <p>24 case with Ms. Annand.</p>	<p style="text-align: right;">69</p> <p>1 A. I've never seen her raise her voice or point</p> <p>2 her finger at a Caucasian employee in that customer</p> <p>3 service unit.</p> <p>4 Q. Is it possible it's happened and you haven't</p> <p>5 seen it?</p> <p>6 A. Pardon me?</p> <p>7 Q. It's possible it's happened, you just haven't</p> <p>8 seen it?</p> <p>9 A. It's not going to happen.</p> <p>10 Q. Well, my point is, there's a lot of time you</p> <p>11 missed from work, six days on average a month. So a</p> <p>12 lot could have happened on the six days that you are</p> <p>13 not there, correct?</p> <p>14 A. Correct.</p> <p>15 Q. I mean, that's a work week, six, days, right</p> <p>16 every month you're missing a work week?</p> <p>17 A. Correct. But to answer your question, sir,</p> <p>18 Ms. Annand is not going to yell at a white employee or</p> <p>19 get up in their face and point their finger.</p> <p>20 Q. All right. Does the Division of Child Support</p> <p>21 Enforcement have a policy regarding race relations and</p> <p>22 equal opportunity and equal treatment of people?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. And you're familiar with that?</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

70	<p>1 A. Somewhat.</p> <p>2 Q. All right. And have you received training as</p> <p>3 to, if you have a complaint, where to make the</p> <p>4 complaint?</p> <p>5 A. Where to make the complaint?</p> <p>6 Q. Mm-hmm.</p> <p>7 A. Yes.</p> <p>8 Q. And when was it you did that, you made those</p> <p>9 complaints?</p> <p>10 A. I went and I met with -- as I told you, I spoke</p> <p>11 with Loretta Brase, which my contact to her has been</p> <p>12 denied. I spoke with her in regards to the complaints</p> <p>13 of negative --</p> <p>14 Q. Do you recall when?</p> <p>15 A. When I spoke with Ms. Brase? It was -- I was</p> <p>16 out on workman's comp when I spoke with her. July, I</p> <p>17 could say, July of '04 when I spoke with her.</p> <p>18 And I also then with LaTanya Warren and</p> <p>19 Alice Bailey. I don't remember the exact date when I</p> <p>20 met with them. I have it in my documents. It's in</p> <p>21 regards to the harsh treatment about -- from</p> <p>22 Ms. Annand as well as the request for me to be</p> <p>23 transferred to Kent County.</p> <p>24 Q. Who is Bailey?</p>	72
71	<p>1 A. Alice Bailey is HR tech or rep that works on</p> <p>2 the Herman Holloway campus.</p> <p>3 Q. What's her race?</p> <p>4 A. White.</p> <p>5 Q. And LaTanya, who is the other person?</p> <p>6 A. Warren. She's black.</p> <p>7 Q. Where does she work?</p> <p>8 A. She worked on the Herman Holloway campus.</p> <p>9 Q. And what did they say they were going to do for</p> <p>10 you?</p> <p>11 A. They said that they were going to discuss --</p> <p>12 well, Ms. Warren said she was going to discuss it with</p> <p>13 her supervisor.</p> <p>14 Q. Did she discuss it with her supervisor?</p> <p>15 A. I don't know if she did or didn't.</p> <p>16 Q. Right. Now, in 2004, were you working anywhere</p> <p>17 other than for the State?</p> <p>18 A. In 2004?</p> <p>19 Q. Mm-hmm.</p> <p>20 A. I worked a part-time job on weekends at Dover</p> <p>21 Downs. I quit that job on May 31st. That job was</p> <p>22 quit before I went out on workman's comp.</p> <p>23 Q. 2004 you quit?</p> <p>24 A. Mm-hmm.</p>	73

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">74</p> <p>1 A. No.</p> <p>2 Q. It was a kind of a spur of the --</p> <p>3 A. When I was offered the job at the beginning of</p> <p>4 August was when I decided that I was going to take the</p> <p>5 job. And that was when I decided to go to North</p> <p>6 Carolina.</p> <p>7 Q. Now, how much did they pay you in North</p> <p>8 Carolina?</p> <p>9 A. How much did they paid me?</p> <p>10 Q. Mm-hmm.</p> <p>11 A. My starting salary was 30,000 -- I think 30,200</p> <p>12 a year or something like that.</p> <p>13 Q. Is that more than you were making in Delaware?</p> <p>14 A. Yes.</p> <p>15 Q. So you resigned to get a better position and</p> <p>16 you were getting paid more money in the North Carolina</p> <p>17 position?</p> <p>18 A. Yes. Delaware position -- I worked down in</p> <p>19 Georgetown, Sussex County. When I went to Georgetown</p> <p>20 and Sussex County, my salary was 20 -- it was higher</p> <p>21 than 27,000. I did a lateral transfer from Georgetown</p> <p>22 to come back to New Castle at the same job title and</p> <p>23 the Division demoted my salary. It was a lateral</p> <p>24 transfer. For what reason, I don't know.</p>	<p style="text-align: right;">76</p> <p>1 back, but my daughter was being seen by a specialist</p> <p>2 of A.I. duPont at Wilmington. So it was beneficial</p> <p>3 for me to be back up New Castle to get her to her</p> <p>4 appointments than to be down in Georgetown.</p> <p>5 Q. Let me just make sure I've got this straight.</p> <p>6 When you first started working for the Division of</p> <p>7 Child Support Enforcement, what was your work</p> <p>8 location?</p> <p>9 A. Stockton Building in Newark.</p> <p>10 Q. That was in 2000?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Then you were transferred at your request to</p> <p>13 Sussex, Georgetown?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. You worked there for eight months?</p> <p>16 A. Yes. I interviewed. They had a posting and I</p> <p>17 interviewed for child support specialist job in</p> <p>18 Georgetown.</p> <p>19 Q. In 2000 who was your supervisor?</p> <p>20 A. In Georgetown?</p> <p>21 Q. When you worked at the Stockton Building.</p> <p>22 A. Joyce Updike.</p> <p>23 Q. Then you transferred to Georgetown?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">75</p> <p>1 Q. When was that? When was that move from Sussex</p> <p>2 County?</p> <p>3 A. When was the move from Sussex County?</p> <p>4 Q. Mm-hmm.</p> <p>5 A. In 2000 -- I think it's 2003. 2003 when I came</p> <p>6 back from -- when I left Georgetown Child Support</p> <p>7 office and came back up to New Castle.</p> <p>8 Q. How long were you in the Georgetown Child</p> <p>9 Support office?</p> <p>10 A. Like eight months.</p> <p>11 Q. And you asked to be laterally transferred to</p> <p>12 New Castle?</p> <p>13 A. Yes. I was -- it was a lateral transfer.</p> <p>14 Q. You lived in Dover at the time, correct?</p> <p>15 A. Yes. I left. I worked at customer service. I</p> <p>16 interviewed out of customer service and got a job for</p> <p>17 a caseworker in Georgetown, Georgetown Child Support</p> <p>18 office. I went down to the Georgetown Child Support</p> <p>19 office to work. I was there for like about eight</p> <p>20 months, and I transferred back up to New Castle</p> <p>21 because my daughter was seen by -- was being seen by a</p> <p>22 specialist at A.I. duPont. That's the only reason why</p> <p>23 I went back to New Castle customer service. God only</p> <p>24 knows. I left that unit. I would have never gone</p>	<p style="text-align: right;">77</p> <p>1 Q. You stayed there for about eight months?</p> <p>2 A. Yes.</p> <p>3 Q. Then you transferred to New Castle?</p> <p>4 A. Yes. When I came back to New Castle, my</p> <p>5 supervisor was still Joyce Updike and Brenda Annand.</p> <p>6 And then Ms. Updike retired, and then it was just</p> <p>7 Ms. Annand.</p> <p>8 Q. How was it the two of them were your</p> <p>9 supervisor?</p> <p>10 A. Because we had two supervisors in the unit.</p> <p>11 Q. I mean, would certain employees report to one</p> <p>12 and certain employees report to the other one?</p> <p>13 A. Not to the best of -- at that time when</p> <p>14 Ms. Updike was there --</p> <p>15 Q. Would you report to both of them?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. That was in 2000, or is that when you came back</p> <p>18 and -- when you were in Georgetown? What year?</p> <p>19 A. I don't remember the exact year, sir. I think</p> <p>20 it was 2002. I don't remember the exact year or</p> <p>21 months that I worked in Georgetown.</p> <p>22 Q. Then you returned back to New Castle sometime</p> <p>23 in 2003?</p> <p>24 A. Yes.</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

78	<p>1 Q. Is that about right?</p> <p>2 A. Yes.</p> <p>3 Q. And when you returned it was Updike and Annand</p> <p>4 that were your supervisors?</p> <p>5 A. Yes.</p> <p>6 Q. Now, how was the work environment in 2003?</p> <p>7 A. How was it?</p> <p>8 Q. Mm-hmm.</p> <p>9 A. With Ms. Annand, it was very harsh. With</p> <p>10 Ms. Updike not.</p> <p>11 Q. Have you ever filed any other EEOC complaints?</p> <p>12 A. No.</p> <p>13 Q. Have you filed any discrimination complaints --</p> <p>14 A. No.</p> <p>15 Q. -- with any employer?</p> <p>16 A. No.</p> <p>17 Q. Let me show you this document. It's been Bates</p> <p>18 stamped B00041. It's one of the documents you</p> <p>19 provided. Do you see that B00041? It appears to be</p> <p>20 an e-mail with your writing on it, is that correct?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. And my understanding is you sent an e-mail to</p> <p>23 Ms. Annand on February 6, 2004, subject, testing and</p> <p>24 interview schedule, correct?</p>	80	<p>1 bottom. What did you write?</p> <p>2 A. I said my reason for the visit to human</p> <p>3 resources was not revealed to Ms. Annand. I didn't</p> <p>4 tell Ms. Annand why I was going to HR. She knew that</p> <p>5 I had the interview, which was with the division of --</p> <p>6 Division of Visually Impaired. I told her I had an</p> <p>7 appointment at HR to discuss a concern. For her to</p> <p>8 put in here when did I arrive to review my file, I</p> <p>9 didn't tell her what I was going to HR for.</p> <p>10 Q. Well, correct me if I'm wrong, but in your</p> <p>11 e-mail February 6, 2004, it doesn't state anything</p> <p>12 about you going to HR.</p> <p>13 A. No, it doesn't.</p> <p>14 Q. I'm confused.</p> <p>15 A. It doesn't -- no, it doesn't state that I am</p> <p>16 going to HR, but Ms. Annand was informed. Prior to me</p> <p>17 going over to HR, I told her I had the interview and I</p> <p>18 had an appointment at HR. I basically went to HR</p> <p>19 because I wanted to talk to someone about the negative</p> <p>20 treatment and statements made by Ms. Annand toward</p> <p>21 myself.</p> <p>22 Q. Okay. But you agree with me that nowhere in</p> <p>23 your e-mail does it say you're going to HR?</p> <p>24 A. No. It doesn't.</p>
79	<p>1 A. Mm-hmm.</p> <p>2 Q. It says, "Brenda, I am scheduled to test for a</p> <p>3 state job position on 2/11/04 at the state fire school</p> <p>4 in Dover from 9:00 a.m. to 11:30 a.m. Also on</p> <p>5 02/24/04, I'm scheduled to interview for a state job</p> <p>6 posting. I will need to leave work at 9:30 a.m. to</p> <p>7 attend a 10:00 a.m. scheduled interview. Would you</p> <p>8 please mark your calendar for these dates? You are</p> <p>9 not in today. So this is why e-mail was sent. I will</p> <p>10 be returning to work after scheduled events."</p> <p>11 Did I correctly read what you e-mailed to</p> <p>12 your supervisor?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Above that, is from Brenda Annand to Alice</p> <p>15 Bailey?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. And it says, "Could you please let me know when</p> <p>18 Jackie arrived today to review her file and when she</p> <p>19 left. She sent me the e-mail below on 2/6/04 and</p> <p>20 stated she had an interview for a state job 10:00</p> <p>21 o'clock this morning and would be leaving at 9:30.</p> <p>22 It's now 12:40 p.m. and she's still not back and I</p> <p>23 haven't heard from her."</p> <p>24 And then you wrote something at the</p>	81	<p>1 Q. What does it say?</p> <p>2 A. It says that I'm going to interview.</p> <p>3 Q. "I'm scheduled to interview for a state job</p> <p>4 posting"?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. That wasn't true?</p> <p>7 A. I did go to an interview. I interviewed with</p> <p>8 the Division of Visually Impaired and then, after I</p> <p>9 left the interview, I had my appointment scheduled</p> <p>10 over at HR. That appointment was done in writing. I</p> <p>11 had to write a request in writing to come over and</p> <p>12 view my file. But I did have an interview on that</p> <p>13 day. That's not a false statement. I had an</p> <p>14 interview.</p> <p>15 Q. Okay. So she was inquiring where you were</p> <p>16 because you told her that you were going to be</p> <p>17 interviewing on the 24th and it was 12:30. At that</p> <p>18 time she said she hadn't heard anything from you.</p> <p>19 A. Yeah. But then, when she inquired, when did</p> <p>20 I -- please let her know when Jackie arrived to review</p> <p>21 her file. I didn't tell her what I was going to HR</p> <p>22 for. I just told her I had an appointment at HR. I</p> <p>23 did not tell her I was going to review my personnel</p> <p>24 file.</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">82</p> <p>1 Q. Well, didn't you have to put in a written 2 request to review your personnel file? 3 A. Which was faxed to LaTanya Warren. It wasn't 4 faxed to Brenda Annand. 5 Q. All right. 6 A. That was basically -- to review my file was 7 basically an excuse that I used to get over to HR to 8 address my concerns about Ms. Annand without her 9 having knowledge and knowing why I was going over 10 there and what I was doing. 11 Q. All right. Did you review your file? 12 A. My file was not reviewed. 13 Q. You wrote a letter requesting to review your 14 file, but you didn't actually review? 15 A. The information I requested to see in my file 16 was not contained in my file they said. What I asked 17 them to review in my file is, when you go on 18 interviews for employment, if an employer calls to get 19 a reference on you and it's provided by the agency, I 20 wanted to know what employers had called and 21 obtained -- to obtain a reference on me. And I wanted 22 to know what was contained in the reference. But when 23 I got over to HR, they said I would have to go back to 24 those employment agencies that I interviewed with to</p>	<p style="text-align: right;">84</p> <p>1 candidate? 2 A. That's -- that's possible. But I wanted to see 3 what was in my personnel file. 4 Q. At B00053, it appears to be a DSC May 11, 2005, 5 hearing. 6 A. Pardon me? 7 Q. A transcript of a hearing. 8 A. Mm-hmm. 9 Q. Who is obligator? 10 A. That is the non-custodial parent. That's the 11 person -- 12 Q. That owes the child support? 13 A. Yes. That owes child support. 14 Q. Who is Showard? 15 A. She is the supervisor in the accounting unit. 16 Q. And Kirk Ryan? 17 A. That's the attorney that's hired, who's not a 18 state employee, but they are hired by Division to 19 facilitate these administrative hearings. 20 Q. In this case, the obligator is telling -- at 21 the hearing, he's saying, the beginning of the middle 22 of the page, he says, "Okay. Upon that conversation, 23 was that conversation with Jacqueline Berry? 24 "Yes."</p>
<p style="text-align: right;">83</p> <p>1 get that information. 2 Q. You wanted to know that, in your personnel 3 file, when a potential employer reference checked on 4 you, you wanted to know who it was that checked on 5 you? 6 A. Yes. I wanted to know who it was that checked 7 on me and what information was provided to them. That 8 was what I was asking when. 9 Q. Why is it you wanted to know that? 10 A. Because of all my years of employment out of 11 the state government or in the state government, when 12 I got hired with Child Support, and the negative 13 relationship came about with Ms. Annand and myself, it 14 just seemed -- and I was going repeatedly on 15 interviews trying to interview to get out of the 16 agency. I was trying to get away from the situation 17 myself. And I had been called back several times for 18 second interview, had even been contacted from 19 directors of agencies for second interviews, and I 20 wasn't getting the job. So I was feeling that maybe 21 negative information was being provided to these 22 individuals or why I wasn't being considered for the 23 employment. 24 Q. Is it possible you were not the better</p>	<p style="text-align: right;">85</p> <p>1 The obligator says, "Okay. She told me 2 verbally on the phone, it made no difference if I were 3 to request an administrative hearing because DSC 4 already made a decision to attach the tax, to 5 intercept them." 6 Do you see that? 7 A. Mm-hmm. 8 Q. Is that something you said? 9 A. No, sir. 10 Q. If you say something like that, that would be 11 wrong, right? 12 A. It would be exactly wrong, sir, because I would 13 violate basically their rights. The Division has to 14 allow them the opportunity to come in and show burden 15 of proof of why they feel their taxes should not be 16 intercepted. 17 Q. Then there's another document, B00055. It's 18 another transcript of another hearing, is it not? 19 A. Mm-hmm. 20 Q. And the obligator is telling the hearing 21 officer, "There's one lady that keeps calling me up 22 telling me I shouldn't come to this and I shouldn't 23 waste my time and I shouldn't take a day off. And I 24 don't know why you're doing it. She called me like</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

86	<p>1 seven times in two weeks."</p> <p>2 And then the hearing officer, Kirk Ryan,</p> <p>3 asking, "Do you know who that is?"</p> <p>4 A. Mm-hmm.</p> <p>5 Q. "That would be helpful to know because you have</p> <p>6 the wrong information."</p> <p>7 A. Yes.</p> <p>8 Q. Her name is, and they -- he looks at the paper</p> <p>9 and he say that's you, correct?</p> <p>10 A. Pardon me?</p> <p>11 Q. He identified you as being the one?</p> <p>12 A. No. Ms. Showard, who led the witness or the</p> <p>13 obligor, she's looking at the paper and says that</p> <p>14 that's Berry. There were two individuals in the</p> <p>15 accounting unit. There was a Rose Bailey and</p> <p>16 Jacqueline Berry. So each and every time when she led</p> <p>17 these people -- and this one here, this administrative</p> <p>18 hearing here never took place.</p> <p>19 Q. It never took place?</p> <p>20 A. No, sir.</p> <p>21 Q. Why did it never take place?</p> <p>22 A. The obligor never met with a Kirk Ryan. The</p> <p>23 obligor only met with Ms. Showard. So I was wondering</p> <p>24 how was there a recording of a tape of an</p>	88	<p>1 Q. When was it that you interviewed this obligor?</p> <p>2 A. About two weeks ago. It was after I sent these</p> <p>3 documents to you.</p> <p>4 Q. You interview this guy two weeks ago?</p> <p>5 A. Yes, I did.</p> <p>6 Q. How did you get his telephone number?</p> <p>7 A. Pardon me?</p> <p>8 Q. How did you get his telephone number?</p> <p>9 A. How did I get his telephone number?</p> <p>10 Q. Yeah.</p> <p>11 A. You look on the case.</p> <p>12 Q. Did you -- is that --</p> <p>13 A. I have this.</p> <p>14 Q. What's the source of these documents? Where</p> <p>15 did you get these?</p> <p>16 A. Where did I get those documents?</p> <p>17 Q. Mm-hmm.</p> <p>18 A. The day that Ms. Annand gave me my performance</p> <p>19 review --</p> <p>20 Q. Mm-hmm.</p> <p>21 A. -- she gave me these to copy.</p> <p>22 Q. Okay.</p> <p>23 A. I went to the copier and copied them. But</p> <p>24 someone had took them out of the copier. You want to</p>
87	<p>1 administrative hearing that was held -- the obligor</p> <p>2 ever never had administrative hearing.</p> <p>3 Q. You're saying there was no such hearing?</p> <p>4 A. No, sir.</p> <p>5 Q. So this was a forgery?</p> <p>6 A. I don't know what you want to call it, but no</p> <p>7 administrative hearing took place on this here.</p> <p>8 Q. Why is that you say that?</p> <p>9 A. Because I interviewed the obligor.</p> <p>10 Q. What did he say?</p> <p>11 A. That he met with a Ms. Showard. I asked, was</p> <p>12 there anyone attending this meeting? And the obligor</p> <p>13 stated, no, he met with a short, white, blonde-haired</p> <p>14 lady. That was Ms. Showard. I knew who he was</p> <p>15 talking about. There was no Kirk Ryan present at such</p> <p>16 a meeting. There was no administrative hearing held.</p> <p>17 All Ms. Showard did was explain to the obligor the</p> <p>18 account statement that I had sent to the obligor in</p> <p>19 the mail. She explained to him how to read the</p> <p>20 account statements, which I had suggested to him to</p> <p>21 come in and sit down with someone in accounting to go</p> <p>22 over and read that account statement with him. He</p> <p>23 would get a better hand with someone showing him than</p> <p>24 trying to explain it to him over the telephone.</p>	89	<p>1 find e-mails that I showed you where I tried to obtain</p> <p>2 this information from Ms. Dianne Walters, who she said</p> <p>3 she couldn't find it and they would not give it to me.</p> <p>4 One of my co-workers had retrieved my documents out of</p> <p>5 the copier and gave them to me at a later time. That</p> <p>6 was how I got a copy of this stuff. It was used on my</p> <p>7 performance review.</p> <p>8 Q. So you're saying this April 29, 2005, hearing</p> <p>9 never took place?</p> <p>10 A. It never took place.</p> <p>11 Q. Based on your conversation, your --</p> <p>12 A. With the obligor.</p> <p>13 Q. Now, the obligor's name is not here, is it?</p> <p>14 A. Hmm?</p> <p>15 Q. The obligor's name is redacted?</p> <p>16 A. No. It's on -- Mr. Sherwood.</p> <p>17 Q. I mean, were you instructed to contact these</p> <p>18 people after the fact --</p> <p>19 A. Pardon me?</p> <p>20 Q. -- to verify this?</p> <p>21 A. Was I instructed to contact him after the fact</p> <p>22 to verify it? No.</p> <p>23 Q. Why did you do that?</p> <p>24 A. Because I sent you the documents. I had called</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">90</p> <p>1 your secretary and told her that I had an addendum. I</p> <p>2 called because I knew that I did not say this to this</p> <p>3 man. And that was why I called him.</p> <p>4 Q. Well, is it possible that the gentleman you</p> <p>5 talked to after the case forgot that he was at a</p> <p>6 hearing?</p> <p>7 A. If he had an administrative hearing, sir,</p> <p>8 that's like a formal process. It's recorded. I don't</p> <p>9 think that he or anyone would forget that they were at</p> <p>10 a hearing.</p> <p>11 Q. Now, there was another transcript for May 13th,</p> <p>12 2005, request for continuance, teleconference?</p> <p>13 A. Which number are you looking at?</p> <p>14 Q. It's B00057.</p> <p>15 A. Okay.</p> <p>16 Q. Did this happen?</p> <p>17 A. This is with Mr. Faron Daniels, who states I</p> <p>18 say his name funny.</p> <p>19 Q. And he is saying you're telling him certain</p> <p>20 things, correct?</p> <p>21 A. Pardon me?</p> <p>22 Q. He's reporting in this teleconference that you</p> <p>23 told him certain things. It's underlined what you</p> <p>24 purportedly told him, correct?</p>	<p style="text-align: right;">92</p> <p>1 Q. Mm-hmm.</p> <p>2 A. On this one here, he changed his mind and he</p> <p>3 wanted to proceed with the tax administrative hearing.</p> <p>4 But the complaint was that I sent a request that the</p> <p>5 man wanted to be deleted. At one time did he want to</p> <p>6 be deleted because I have the e-mail here. He wanted</p> <p>7 to withdraw. 0079. I have on here that he's</p> <p>8 requesting to withdraw from the tax administrative</p> <p>9 hearing. But then 0076, he's asking to proceed.</p> <p>10 Q. Okay. Now, would you look at B00058? This is</p> <p>11 another teleconference hearing, correct?</p> <p>12 A. Mm-hmm.</p> <p>13 Q. And they underlined, I believe, what they</p> <p>14 believe what this person is telling the hearing</p> <p>15 officer what he was told by you?</p> <p>16 A. I read everything what these accusations are so</p> <p>17 called made by me, but I did not say this to these</p> <p>18 individuals.</p> <p>19 Q. Okay. So this person as well is not telling</p> <p>20 the truth, is that correct?</p> <p>21 A. I did say that to the person.</p> <p>22 Q. So if he's saying you said that, that's not</p> <p>23 correct; that's a lie?</p> <p>24 A. That's not correct.</p>
<p style="text-align: right;">91</p> <p>1 A. Which one are you looking at again, sir?</p> <p>2 Q. It starts at page 57 and goes to 58, I believe.</p> <p>3 A. Okay. This same person here --</p> <p>4 Q. It appears to be the same person, correct?</p> <p>5 A. I guess.</p> <p>6 Q. And underlined is what purportedly -- maybe</p> <p>7 these are two different teleconferences. I don't</p> <p>8 know.</p> <p>9 Anyway on the first one I showed you, 57,</p> <p>10 are you saying you didn't say those things he's saying</p> <p>11 you said?</p> <p>12 A. I'm not -- no. I didn't say this to this guy.</p> <p>13 Q. So what he's reporting is false?</p> <p>14 A. Yeah. What she says that -- I told her that</p> <p>15 the guy had -- she's saying I told her that</p> <p>16 Mr. Daniels, Faron Daniels had stated that he wanted</p> <p>17 to be deleted from administrative hearing. If you</p> <p>18 look at these case notes here, there was a case note</p> <p>19 that I did send to Ms. -- to the tax unit telling them</p> <p>20 that he wanted to be deleted -- let me see. There's</p> <p>21 one where he wanted to be deleted, and then there was</p> <p>22 one where he called back and he asked to proceed with</p> <p>23 the tax administrative hearing, the latest one on page</p> <p>24 00076.</p>	<p style="text-align: right;">93</p> <p>1 Q. So he --</p> <p>2 A. I never made an allegation to anybody trying to</p> <p>3 distract them to come in for an administrative hearing</p> <p>4 because I know that's their right, that's their way of</p> <p>5 proving that their taxes should not be intercepted. I</p> <p>6 never try to distract anybody from coming in to Child</p> <p>7 Support to have an administrative hearing.</p> <p>8 Q. Okay. Then the next document, B00059, looks</p> <p>9 like a request for an administrative hearing.</p> <p>10 A. This is the letter that Ms. Showard said the NC</p> <p>11 sent in stating that he wanted an administrative</p> <p>12 hearing, stating that I had informed her that he</p> <p>13 wanted to withdraw. And as I said, the case notes do</p> <p>14 show where I did send her a case note that he</p> <p>15 requested to withdraw but then he called back and</p> <p>16 wanted to proceed. So there's a case note to document</p> <p>17 and justify that.</p> <p>18 Q. He's complaining that, according to him, "I was</p> <p>19 asked by Jackie Berry, Newark office, if I would like</p> <p>20 to postpone this hearing until they received my fax</p> <p>21 (copies of my stubs) and reviewed my case. I agreed</p> <p>22 to this, hoping this would put an end to this</p> <p>23 bookkeeping error. I received a letter from DCSC on</p> <p>24 March 19th indicating I had discharged my hearing. My</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

94	<p>1 account was being transferred to a collecting agent.</p> <p>2 This was a falsehood. I never discharged the hearing.</p> <p>3 I respectfully request a hearing to resolve this</p> <p>4 issue."</p> <p>5 In other words he's saying that you told</p> <p>6 him that you were going to postpone the hearing until</p> <p>7 he could collect his -- and instead, it indicates that</p> <p>8 you discharged the hearing. It says he never wanted</p> <p>9 that.</p> <p>10 A. He never wanted a hearing?</p> <p>11 Q. He never wanted you to discharge the hearing.</p> <p>12 A. I don't have a right to discharge anything.</p> <p>13 When someone makes a request to be discharged from a</p> <p>14 hearing, it goes to Ms. Showard. I don't discharge</p> <p>15 anything. I don't -- I didn't have the right to do</p> <p>16 that. But as I said, if you look at the case notes,</p> <p>17 at one point, the NCP had requested to withdraw. But</p> <p>18 then he called back again and requested to proceed.</p> <p>19 There are case notes to justify it.</p> <p>20 Q. Why would Mr. Showard make a false statement</p> <p>21 about you? Do you know him?</p> <p>22 A. Ms. Showard?</p> <p>23 Q. You said --</p> <p>24 A. Why would who?</p>	96
95	<p>1 Q. Under B00061 you say, "Document was printed to</p> <p>2 support false complaints made by Ms. Showard."</p> <p>3 A. Why -- you're asking me why would Mr. Sherwood</p> <p>4 make a false complaint?</p> <p>5 Q. What did you write? What does your handwriting</p> <p>6 on that document say?</p> <p>7 A. "Documents I printed to support false</p> <p>8 complaints made by Ms. Showard.</p> <p>9 Q. Okay.</p> <p>10 A. So the complaints made by Ms. Showard were in</p> <p>11 that so-called administrative hearing with Kirk Ryan</p> <p>12 present that Mr. Sherwood say did not take place.</p> <p>13 There was no administrative hearing held.</p> <p>14 Q. I'm confused. Ms. Showard is merely one of the</p> <p>15 persons in the transcript. She's not making any</p> <p>16 statements about what you said to anyone. She's</p> <p>17 asking him.</p> <p>18 A. Exactly.</p> <p>19 Q. How is it her false statement then?</p> <p>20 A. Pardon me?</p> <p>21 Q. How would it be her false statement?</p> <p>22 A. How is it her false statement?</p> <p>23 Q. Yeah. That's what I don't understand. In your</p> <p>24 document -- and I'm talking about B00062 --</p>	97

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">98</p> <p>1 A. Mm-hmm.</p> <p>2 Q. Who was doing it before you?</p> <p>3 A. I don't know who was doing it before me.</p> <p>4 Q. Could it be that you only got it when it became</p> <p>5 open?</p> <p>6 A. I don't know.</p> <p>7 Q. To your knowledge, document B00086, there's a</p> <p>8 letter to you dated October 22nd, 2004.</p> <p>9 A. Mm-hmm.</p> <p>10 Q. What is this letter about?</p> <p>11 A. What is this letter about?</p> <p>12 Q. Mm-hmm.</p> <p>13 A. It's saying they are recommending my dismissal</p> <p>14 from my position.</p> <p>15 Q. And what was it for? Why were they</p> <p>16 recommending your dismissal?</p> <p>17 A. It says, "Due to my unavailability for work."</p> <p>18 Q. Is it true that you hadn't been to work in</p> <p>19 quite some time?</p> <p>20 A. I was out for carpal tunnel, both my hands. I</p> <p>21 had surgery.</p> <p>22 Q. He indicates in the letter on the second page,</p> <p>23 the end of the first paragraph, the top, "Your absence</p> <p>24 from September 20, 2004, to date are unauthorized and</p>	<p style="text-align: right;">100</p> <p>1 Q. Mm-hmm.</p> <p>2 A. I don't know how long. You want to know how</p> <p>3 long it was after this letter that I returned or how</p> <p>4 long --</p> <p>5 Q. Yeah.</p> <p>6 A. -- when I returned.</p> <p>7 Q. When did you return to work after that letter?</p> <p>8 A. I don't -- I don't recall the date, sir, when I</p> <p>9 initially returned to work because there were several</p> <p>10 occasions where I would return to work but then go</p> <p>11 back to the workman's comp carrier physician that was</p> <p>12 treating me and he would change something on my</p> <p>13 prescription and then I would be put back out of work.</p> <p>14 I had a predecision hearing on November</p> <p>15 19, 2004, to return me back to work.</p> <p>16 Q. Turning to B00097 through B00099, just tell us</p> <p>17 what these are.</p> <p>18 A. This is a copy of information that Ms. Santana</p> <p>19 used with filing her complaint.</p> <p>20 Q. Did she give it to you?</p> <p>21 A. Pardon me?</p> <p>22 Q. Did she give it to you?</p> <p>23 A. Ms. Santana?</p> <p>24 Q. Yes.</p>
<p style="text-align: right;">99</p> <p>1 subject to disciplinary action."</p> <p>2 Were they unauthorized?</p> <p>3 A. No, sir. What had happened, Ms. Annand said</p> <p>4 that I had left work and abandoned my job and she did</p> <p>5 not know what was going on with me while I was out on</p> <p>6 workman's comp. I was told when I was put out on</p> <p>7 workman's comp that -- by Alice Bailey because she was</p> <p>8 informed that I had an attorney, that any</p> <p>9 communication or anything had to be with the attorney</p> <p>10 and not myself. So all documents that were pertaining</p> <p>11 to my workman's comp injury were sent to my doctor,</p> <p>12 which my doctor sent them to the state's legal rep for</p> <p>13 them.</p> <p>14 But she had said that I had abandoned my</p> <p>15 job and she didn't know what was going on with me or</p> <p>16 anything. So I ended up having a predecision hearing</p> <p>17 or something to come back to work, and it was narrowed</p> <p>18 down that miscommunication, lack of communication</p> <p>19 between the legal reps are why such an statement was</p> <p>20 put in there.</p> <p>21 Q. Did you return to work shortly thereafter?</p> <p>22 A. Yes, sir.</p> <p>23 Q. For how long?</p> <p>24 A. How long did I return to work?</p>	<p style="text-align: right;">101</p> <p>1 A. Yes.</p> <p>2 Q. How are your hands now that you've had the</p> <p>3 surgery for release done for the carpal tunnel?</p> <p>4 A. I'm still diagnosed with carpal tunnel, sir. I</p> <p>5 followed up with a physician and had another nerve</p> <p>6 conduct study in North Carolina. And results were</p> <p>7 revealed that I have carpal tunnel and they are</p> <p>8 recommending a second surgery. After what I went</p> <p>9 through with the first surgery, I just haven't</p> <p>10 considered having that second surgery.</p> <p>11 Q. So you're getting the symptoms back?</p> <p>12 A. I -- even when I had the first surgery, I</p> <p>13 always slightly did have the symptoms and which my</p> <p>14 doctor, treating physician here had recommended and</p> <p>15 referred me to go to voc rehab and had recommended a</p> <p>16 second surgery too, but you know, I -- I just haven't</p> <p>17 considered having that done yet.</p> <p>18 Q. Turn your attention to B00125. It's an e-mail</p> <p>19 from you to your supervisor Brenda Annand.</p> <p>20 A. Mm-hmm.</p> <p>21 Q. It's "request of my daughter's treating doctor,</p> <p>22 move to Kent County employment." You indicate -- you</p> <p>23 don't call her Brenda, you call her Brend.</p> <p>24 A. No. The A is missing.</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

102	<p>1 Q. I mean, is that just a mistake?</p> <p>2 A. Mistake.</p> <p>3 Q. Okay. "Brenda, per visit on 2/10/04, my</p> <p>4 daughter's doctor wrote another request for me to be</p> <p>5 employed closer to work due to my daughter's medical</p> <p>6 condition." And then you recount, "per our discussion</p> <p>7 of November 13, '04, and one in January 6, '04, I was</p> <p>8 informed by you that the request made by my daughter's</p> <p>9 doctor would not be granted. Due that I received the</p> <p>10 same request again, I'm requesting in writing from you</p> <p>11 of why such request cannot be granted. Please provide</p> <p>12 me with such documentation at your earliest</p> <p>13 convenience. I did not discuss letter received</p> <p>14 2/10/04 with you due to same concern already discussed</p> <p>15 twice and not granted."</p> <p>16 Then she responded to your e-mail, did she</p> <p>17 not?</p> <p>18 A. Mm-hmm.</p> <p>19 Q. And what did she say?</p> <p>20 A. She said that I "applied and was hired to be a</p> <p>21 child support specialist 1 in the customer service</p> <p>22 unit, which is located here in New Castle. There was</p> <p>23 no customer service unit position located in Kent</p> <p>24 County is an automated call center is ran in the</p>	104	<p>1 customer service unit, did they apply for those</p> <p>2 positions?</p> <p>3 A. Some applied and some were just lateral moved.</p> <p>4 Q. At their request?</p> <p>5 A. Pardon me?</p> <p>6 Q. At their request?</p> <p>7 A. It could have been at their request or not. I</p> <p>8 don't know.</p> <p>9 Q. Well, you were laterally moved, were you not,</p> <p>10 at your request?</p> <p>11 A. I interviewed for the position back up in New</p> <p>12 Castle and was offered the position and took the</p> <p>13 lateral move back up.</p> <p>14 Q. You applied for it or you made a request for</p> <p>15 it?</p> <p>16 A. I applied. I interviewed.</p> <p>17 Q. So you've done it before; you've applied and</p> <p>18 been laterally moved to transfer, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So if you wanted to be transferred to Kent</p> <p>21 County, you could do the same thing, right?</p> <p>22 A. Apply if you're given the opportunity to apply.</p> <p>23 They had two openings. They never posted the</p> <p>24 positions. They just did in-house moves that no one</p>
103	<p>1 Churchman's building. At this present time there are</p> <p>2 also no CTS 1 vacancy in Kent County. If one becomes</p> <p>3 available, you can follow normal procedures and apply</p> <p>4 for it."</p> <p>5 Fully aware of that, that I can apply, but</p> <p>6 if not given the opportunity to apply, if the</p> <p>7 positions become available and they are not posted,</p> <p>8 you're not given the opportunity to apply.</p> <p>9 As well as saying that I was hired to be a</p> <p>10 child support specialist 1 in the customer service</p> <p>11 unit, I was hired by the agency as a child support</p> <p>12 specialist 1, which means, within the Division of</p> <p>13 Child Support, I can go to any agency within any unit</p> <p>14 within that agency if I qualify. It's not necessarily</p> <p>15 saying when I got hired by Child Support that I'm just</p> <p>16 in customer service because, if that was the case,</p> <p>17 other co-workers that there were hired in customer</p> <p>18 service would not be in the other units with an agency</p> <p>19 today themselves. It would just hired in customer</p> <p>20 service.</p> <p>21 Q. Did they apply for those transfers, do you</p> <p>22 know?</p> <p>23 A. Pardon me?</p> <p>24 Q. The other employees that transferred from the</p>	105	<p>1 was aware even if they knew of.</p> <p>2 Q. There's nothing that violates the merit rules</p> <p>3 about that, is there?</p> <p>4 A. I don't know.</p> <p>5 Q. Would you turn to B00126.</p> <p>6 A. Mm-hmm.</p> <p>7 Q. This is a letter from Linda --</p> <p>8 A. Caballero.</p> <p>9 Q. She's a doctor at the Nemours Children's</p> <p>10 Clinic --</p> <p>11 A. Yes.</p> <p>12 Q. -- in Dover, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And who is it addressed to?</p> <p>15 A. Chuck Hayward and Mr. Vince Meconi.</p> <p>16 Q. And the doctor is saying essentially that he's</p> <p>17 been requesting a change of employment site so that</p> <p>18 you may be close to your daughter to bring her into</p> <p>19 emergency appointments and have requested this</p> <p>20 position change since January. At this point, there</p> <p>21 is no one to honor this medical necessity letter.</p> <p>22 Shanice Morris -- is that your daughter?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. "Has medical conditions and necessitates her</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">106</p> <p>1 mother being nearby and easily available in order to 2 take her to emergency appointments or to the ER. Her 3 diagnosis is considered a critical chronic condition. 4 It's medically necessary for her mother to be 5 available, present for her medical appointments. Due 6 to HIPPA, I do not have to divulge her diagnosis, but 7 she does have medical conditions that require her 8 presence of her mother. Your prompt attention to this 9 matter is greatly appreciated. Any further questions 10 or comments, you can direct them to me." And it gives 11 her name and phone number, correct? 12 <b>A. Mm-hmm.</b> 13 <b>Q. And who is it addressed to?</b> 14 <b>A. Who's the letter addressed to?</b> 15 <b>Q. Yes.</b> 16 <b>A. Chuck Hayward and Vincent Meconi.</b> 17 <b>Q. And who is Chuck Hayward?</b> 18 <b>A. He is director of Child Support.</b> 19 <b>Q. Who is Vincent Meconi.</b> 20 <b>A. Secretary of DHSS.</b> 21 <b>Q. Then at the bottom there's some handwriting.</b> 22 <b>Is that your handwriting?</b> 23 <b>A. Yeah.</b> 24 <b>Q. What's it say?</b></p>	<p style="text-align: right;">108</p> <p>1 That's dated April 7, 2004, correct? 2 <b>A. Mm-hmm. Yes.</b> 3 <b>Q. The next document, B00128, appears to be</b> 4 <b>memorandum written by --</b> 5 <b>A. Dianne Walters.</b> 6 <b>Q. To you, correct?</b> 7 <b>A. Yes.</b> 8 <b>Q. That's dated April 12, 2004, and the subject is</b> 9 <b>"transfer to Kent County."</b> 10 <b>A. Yes.</b> 11 <b>Q. And she recounts that you were hired into the</b> 12 <b>"customer service unit as a child support specialist,</b> 13 <b>that this is presently housed in the New Castle County</b> 14 <b>office. We are unable to move you as your doctor has</b> 15 <b>requested. There are no vacancies at this time in the</b> 16 <b>Kent county office."</b> 17 <b>A. Yes.</b> 18 <b>Q. "If there were, you could apply for a position</b> 19 <b>to another unit, hence allowing for your transfer."</b> 20 <b>A. Mm-hmm.</b> 21 <b>Q. "In an effort to accommodate your request, the</b> 22 <b>director did canvass the Dover office to see if anyone</b> 23 <b>would be interested in a switch of positions. Again,</b> 24 <b>unfortunately, there is no one that was interested in</b></p>
<p style="text-align: right;">107</p> <p>1 <b>A. It says, "This document was withheld from EEOC</b> 2 <b>Philadelphia district office as evidence to my</b> 3 <b>allegations of discrimination."</b> 4 <b>This document here was not turned in to</b> 5 <b>the federal EEOC office. I obtained all documents at</b> 6 <b>child support used to attest the allegations I made</b> 7 <b>against them under the Freedom of Information Act and</b> 8 <b>this is one document that they withheld and did not</b> 9 <b>give them. It was not in the information.</b> 10 <b>Q. Then there was an e-mail at B00127 from Dianne</b> 11 <b>Walters, correct?</b> 12 <b>A. Mm-hmm.</b> 13 <b>Q. And she is your supervisor's supervisor,</b> 14 <b>correct?</b> 15 <b>A. Yes.</b> 16 <b>Q. And she's referring to the letter --</b> 17 <b>A. Mm-hmm.</b> 18 <b>Q. -- from doctors. She says, "Jackie, I wanted</b> 19 <b>to let you know that Chuck is in receipt of your</b> 20 <b>doctor's letter requesting that you be allowed to work</b> 21 <b>from the Kent County office. I'd like to meet with</b> 22 <b>you and Brenda to discuss this situation. When you</b> 23 <b>return to work tomorrow, please see me to set up a</b> 24 <b>time that is convenient."</b></p>	<p style="text-align: right;">109</p> <p>1 such a switch. As we discussed, should you wish to 2 pursue employment in Kent County, I'm sure with the 3 lifting of a hiring freeze, positions will be opening 4 that you could apply for inside the division as well 5 as outside." 6 Then she closes by saying, "Until that 7 time both Brenda and I will work with you to 8 accommodate your child's health care needs. As we are 9 both parents, we understand we need to put our 10 children first in some instances. Feel free to 11 discuss this with either Brenda or myself at any 12 time." 13 Is that how she closes with? 14 <b>A. Yes, sir.</b> 15 <b>Q. Was there a hiring freeze on at this time,</b> 16 <b>prior to this?</b> 17 <b>A. May have been a hiring freeze at that time. My</b> 18 <b>daughter started right -- my daughter's doctor started</b> 19 <b>writing letters to the Division of Child Support,</b> 20 <b>which the first letter they received requesting for a</b> 21 <b>transfer to Kent County was on October 22nd, 2003.</b> 22 <b>This letter dated by Ms. Annand is April 12, 2004. So</b> 23 <b>there had been ample amount of time that had went by</b> 24 <b>with my daughter's doctor repeatedly writing requests.</b></p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

110	<p>1 Q. Do you understand that there is no legal</p> <p>2 obligation they have to transfer you to Kent County?</p> <p>3 A. I thoroughly understand.</p> <p>4 Q. You were asking them to do that and they were</p> <p>5 trying to tell you, well, here's the things you can do</p> <p>6 to get transferred to Kent County, correct?</p> <p>7 A. Right. They said that I could apply, but like</p> <p>8 I said, when openings became available, they weren't</p> <p>9 posted giving me the opportunity to apply.</p> <p>10 Q. Who would --</p> <p>11 A. I know they are not under any preferential --</p> <p>12 you know, give me any preferential treatment to move</p> <p>13 me to Kent County.</p> <p>14 Q. Right. Now, my point is, who's not posting</p> <p>15 these positions that are opening in Kent County?</p> <p>16 A. I guess it has to do with HR. I don't know</p> <p>17 who's -- I don't know who is responsible for posting</p> <p>18 the positions.</p> <p>19 Q. Was it Brenda Annand?</p> <p>20 A. Was it Brenda Annand?</p> <p>21 Q. Is this the reason they are not posting them in</p> <p>22 Kent County? Do you have any information that it was</p> <p>23 Brenda Annand that made it so it wouldn't be posted?</p> <p>24 A. I have no knowledge, sir, why, when positions</p>	112	<p>1 correct?</p> <p>2 A. Which I'm fully aware.</p> <p>3 Q. Okay. And she did indicate, however, that you</p> <p>4 could, of course, always apply for a position if it</p> <p>5 became open, some other position became open?</p> <p>6 A. If --</p> <p>7 Q. You say if you knew about them.</p> <p>8 A. If the positions, when they became available</p> <p>9 were posted, allowing me the opportunity to apply.</p> <p>10 Q. And you and I, through prior discussion, have</p> <p>11 determined that that's not Brenda Annand's fault they</p> <p>12 weren't posted?</p> <p>13 A. I'm fully aware of that.</p> <p>14 Q. Okay. And it's not Dianne Walters fault they</p> <p>15 are not posted?</p> <p>16 A. I'm fully aware. But for either -- for either</p> <p>17 one, Brenda or Dianne, to tell me that I am hired as a</p> <p>18 child support specialist in customer service unit,</p> <p>19 when you're hired at Child Support, it doesn't label</p> <p>20 you to a direct unit. You are hired as a child</p> <p>21 support specialist 1, which any department in that</p> <p>22 agency that you qualify for or in any county that you</p> <p>23 qualify for, you can go there and work.</p> <p>24 Q. In other words, you're free to transfer if</p>
111	<p>1 became available in Kent County, they were not posted.</p> <p>2 Q. Did Dianne Walters have something to do with</p> <p>3 it?</p> <p>4 A. I'm not saying who had anything to do with it.</p> <p>5 I'm just saying, when available positions became</p> <p>6 available in Kent County, they were not posted</p> <p>7 allowing me the opportunity or anyone else with the</p> <p>8 Division of Child Support to apply in interviews for</p> <p>9 such postings.</p> <p>10 Q. All right.</p> <p>11 A. And it was not until the agency even really</p> <p>12 addressed the concern of me going to Kent County until</p> <p>13 my daughter's doctor sent this letter here to Chuck</p> <p>14 Hayward and Vincent Meconi, which at the time I didn't</p> <p>15 even have knowledge and know that she was doing that.</p> <p>16 But it was the agency didn't even really address the</p> <p>17 concern until that letter that was received.</p> <p>18 Q. In fact, you had discussed it with Brenda prior</p> <p>19 to that?</p> <p>20 A. That I discussed it with Brenda and that's the</p> <p>21 only -- she didn't take it any further or pursue it</p> <p>22 any further or anything.</p> <p>23 Q. She did correctly tell you that the customer</p> <p>24 service unit doesn't have positions in Kent County,</p>	113	<p>1 there's an opening?</p> <p>2 A. Yes. Yes.</p> <p>3 Q. And you yourself have already done that at</p> <p>4 least once, maybe twice?</p> <p>5 A. Pardon me?</p> <p>6 Q. You've transferred yourself?</p> <p>7 A. Yes.</p> <p>8 Q. On two occasions?</p> <p>9 A. I applied and interviewed.</p> <p>10 Q. Right.</p> <p>11 A. Yes.</p> <p>12 Q. And that's always available to you, correct?</p> <p>13 A. It's not always available because when the</p> <p>14 openings came in the Kent County office, they were not</p> <p>15 posted allowing me the opportunity to apply.</p> <p>16 Q. Okay. I understand.</p> <p>17 The next document is B00133 to B00137,</p> <p>18 B00138 -- I don't know. No. Maybe that's a different</p> <p>19 document.</p> <p>20 The first document is -- it's Internal</p> <p>21 Revenue Service tax return transcript?</p> <p>22 A. Mm-hmm.</p> <p>23 Q. What is this?</p> <p>24 A. It's my tax file and status for 2005.</p>



Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

<p style="text-align: right;">114</p> <p>1 Q. Did you file electronically?</p> <p>2 A. Yes.</p> <p>3 Q. Is that the only tax return you have?</p> <p>4 A. That was the only one that I -- I filed electronically.</p> <p>5</p> <p>6 Q. Okay.</p> <p>7 A. I had to call them to have them send me a copy of that.</p> <p>8</p> <p>9 Q. Now, would you explain to me what B00138 --</p> <p>10 A. What this is, this is a print-out --</p> <p>11 Q. Wait a second. Let me get done the question. Okay?</p> <p>12</p> <p>13 -- through B00152, what are those things?</p> <p>14 A. This is a print-out that was sent to me from Coventry. I had medical -- I had to have a surgery while I was out on workman's comp. Medically necessitated that I had to have that surgery. The bill was paid by my -- Coventry, the insurance carrier. But seven months later someone from Coventry informed me that someone from HR at Child Support called and told them to reverse the bill for covered charges for services on August 2nd, 2004.</p> <p>21</p> <p>22 Q. Did that have to do with your carpal tunnel?</p> <p>23</p> <p>24 A. No.</p>	<p style="text-align: right;">116</p> <p>1 or is it just --</p> <p>2 A. It's Dr. Varipapa. That's the name of the...</p> <p>3 Q. What have you been treating and how long have you been treating with him?</p> <p>4</p> <p>5 A. How long?</p> <p>6 Q. Mm-hmm.</p> <p>7 A. I don't know the time frame how long I had treated with them, but it was in 2004 that he put me on anxiety medication.</p> <p>8</p> <p>9 Q. Okay. How long had you been seeing him before he put you on anxiety medication?</p> <p>10</p> <p>11 A. How long had I been seeing him?</p> <p>12</p> <p>13 Q. Yes.</p> <p>14 A. I can't give you an exact time frame as far as month or years, but I guess I can say about a year. I don't --</p> <p>15</p> <p>16 Q. What were you seeing him for before he prescribed your anxiety medication?</p> <p>17</p> <p>18 A. This is the doctor that did the nerve conduction study for the carpal tunnel.</p> <p>19</p> <p>20 Q. Okay. And he also gave you anxiety medication?</p> <p>21</p> <p>22 A. Yes, sir.</p> <p>23 Q. What about Dr. Ashok Patel?</p> <p>24</p> <p>25 A. This is medication I was on for hypertension.</p>
<p style="text-align: right;">115</p> <p>1 Q. Now, you recall in my discovery request to you I asked to you list your health care providers and practitioners for the last number of years, and I think you only told me about Dr. Crain, correct?</p> <p>2</p> <p>3 A. No. You have more than Dr. Crain. It's number 12.</p> <p>4</p> <p>5 Q. All right.</p> <p>6</p> <p>7 A. 11 and 12.</p> <p>8</p> <p>9 Q. Okay. So you told me about Dr. Patel's treatment related to hypertension, is that what it says?</p> <p>10</p> <p>11 A. Mm-hmm.</p> <p>12</p> <p>13 Q. Dr. Crain. And then you answered "objection to all health care providers due to information is irrelevant and has no bearing on this case," correct?</p> <p>14</p> <p>15 A. You have CNMRI, that's Dr. Varipapa.</p> <p>16</p> <p>17 Q. Where is that?</p> <p>18</p> <p>19 A. Page 11.</p> <p>20</p> <p>21 Q. Yes.</p> <p>22</p> <p>23 A. Where it says answer, that's a doctor's office there.</p> <p>24</p> <p>25 Q. CNMRI?</p> <p>26</p> <p>27 A. Mm-hmm. It's a neurologist.</p> <p>28</p> <p>29 Q. Okay. CNMRI is actually the name of a doctor</p>	<p style="text-align: right;">117</p> <p>1 Q. How long have you been seeing him?</p> <p>2</p> <p>3 A. For years.</p> <p>4</p> <p>5 Q. In other words, you've had hypertension for years?</p> <p>6</p> <p>7 A. You asked me how long had I been seeing him.</p> <p>8</p> <p>9 Q. Yes.</p> <p>10</p> <p>11 A. He's been my family doctor for some time. I was placed on hypertension medication when I came to Child Support.</p> <p>12</p> <p>13 Q. In 2000?</p> <p>14</p> <p>15 A. I'm not going to say in 2000. It was when I started working for Child Support. I know it was when I was placed on hypertension medication. Since I've left Child Support, I'm no longer on hypertension medication.</p> <p>16</p> <p>17 Q. Now, I asked you a question 5. It's at page 12. What other lawsuit or administrative bodies or proceedings have you had or you've objected and said, "Other requested information is irrelevant. No bearing on this case." Is that correct? Am I reading correctly your response?</p> <p>18</p> <p>19</p> <p>20 A. I put the U.S. Equal Employment Opportunity.</p> <p>21</p> <p>22 Q. Right.</p> <p>23</p> <p>24 A. Right. That's the only one I put. I didn't</p>

Berry v. State of Delaware, Division of Child Support  
Jacqueline D. Berry - Niedzielski

118	<p>1 put the workman's comp one from back in 1997 on here</p> <p>2 with DHCI, but...</p> <p>3 Q. Well, other than that those two -- so this EEOC</p> <p>4 thing that you're identifying here is the one for</p> <p>5 which you brought this lawsuit, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Now, other than that, what other lawsuits have</p> <p>8 you been a party to?</p> <p>9 A. The only other one I had was when I had the</p> <p>10 workman's comp injury years ago at DHCI.</p> <p>11 Q. And there was nothing else; there's no other</p> <p>12 lawsuits?</p> <p>13 A. No.</p> <p>14 Q. And you never filed a discrimination complaint</p> <p>15 before?</p> <p>16 A. Never.</p> <p>17 Q. How are you presently supported?</p> <p>18 A. My son.</p> <p>19 Q. He sends you money?</p> <p>20 A. My son.</p> <p>21 Q. Sends you money?</p> <p>22 A. Mm-hmm.</p> <p>23 And I get child support for my daughter.</p> <p>24 Q. When you left the New Jersey Division of Child</p>	120	<p>1 Now, because of that, discovery closes</p> <p>2 tomorrow in this case.</p> <p>3 A. Mm-hmm.</p> <p>4 Q. And I will need to go to the Court to get the</p> <p>5 Court to force you to sign these authorizations for</p> <p>6 me.</p> <p>7 A. Okay.</p> <p>8 Q. So then I will need additional time to do</p> <p>9 discovery?</p> <p>10 A. Okay.</p> <p>11 Q. So what's your position on an extension of time</p> <p>12 to continue discovery? Do you oppose it or are you</p> <p>13 for it or what?</p> <p>14 A. Say that again, please.</p> <p>15 Q. I want to know what your position is. I'm</p> <p>16 going to request an extension of time to complete</p> <p>17 discovery. Because I've not been able to get these</p> <p>18 hospital, doctor's records, and employment records?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. And what I want to know is, what's your</p> <p>21 position regarding my request for an extension of the</p> <p>22 discovery period?</p> <p>23 A. I will oppose it.</p> <p>24 Q. You will oppose it?</p>
119	<p>1 Support --</p> <p>2 A. New Jersey?</p> <p>3 Q. Yes. I'm sorry. North Carolina.</p> <p>4 Did you get evaluations done when you were</p> <p>5 at North Carolina?</p> <p>6 A. Yes sir.</p> <p>7 Q. How were your evaluations?</p> <p>8 A. I got -- their evaluations or rating is below,</p> <p>9 good, very good, and outstanding. My evaluation was</p> <p>10 very good.</p> <p>11 Q. And you will not sign these authorizations for</p> <p>12 the release of information?</p> <p>13 A. No, sir.</p> <p>14 Q. All right. That's all the questions I have for</p> <p>15 right now. Obviously, if you had signed these</p> <p>16 authorizations and releases to me, I would have been</p> <p>17 able to get some records and I would have been asking</p> <p>18 about those additional records.</p> <p>19 A. I have already contacted my physicians to get</p> <p>20 my records from my physicians for you.</p> <p>21 Q. Yeah. But see, I have a right under the law to</p> <p>22 get them myself --</p> <p>23 A. Mm-hmm.</p> <p>24 Q. -- but you refuse to sign the authorizations.</p>	121	<p>1 A. Mm-hmm.</p> <p>2 Q. Okay. That's fine. Thank you very much.</p> <p>3 A. Okay.</p> <p>4 Q. Oh, listen, you have a right to read and sign,</p> <p>5 if you wish, your transcript. In other words, if you</p> <p>6 do that, they would tell you when to come in and to</p> <p>7 review the transcript in their office. You would</p> <p>8 come, look it over. You can make changes to the</p> <p>9 transcript. You can sign, and that would be included</p> <p>10 in the transcript, or you can say, "I'm going to waive</p> <p>11 that right."</p> <p>12 A. I don't want to do that.</p> <p>13 Q. It's up to you.</p> <p>14 A. I'm not going to waive my right to --</p> <p>15 Q. To read the transcript?</p> <p>16 A. Right.</p> <p>17 Q. Okay. After you read the transcript, did you</p> <p>18 want to buy a copy?</p> <p>19 A. Yes.</p> <p>20 Q. There you have it.</p> <p>21 (Deposition ended at approximately</p> <p>22 3:50 p.m.)</p> <p>23</p> <p>24</p>

Berry v. State of Delaware, Division of Child Support

122	
1	
2	
3	
4	
5	
6	
7	
8	REPLACE THIS PAGE
9	WITH THE ERRATA SHEET
10	AFTER IT HAS BEEN
11	COMPLETED AND SIGNED
12	BY THE DEPONENT.
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
123	
1	State of Delaware )
2	)
3	New Castle County )
4	CERTIFICATE OF REPORTER
5	
6	I, Ann M. Calligan, Registered Merit
7	Reporter and Notary Public, do hereby certify that
8	there came before me on the 27th day of February,
9	2007, the deponent herein, JACQUELINE D. Berry, who
10	was duly sworn by me and thereafter examined by
11	counsel for the respective parties; that the questions
12	asked of said deponent and the answers given were
13	taken down by me in Stenotype notes and thereafter
14	transcribed by use of computer-aided transcription and
15	computer printer under my direction.
16	I further certify that the foregoing is a true
17	and correct transcript of the testimony given at said
18	examination of said witness.
19	I further certify that I am not counsel,
20	attorney, or relative of either party, or otherwise
21	interested in the event of this suit.
22	
23	Ann M. Calligan, RMR
24	(Certification No. 186-RPR)
	(Expires January 31, 2008)
	DATED: March 15, 2007

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JACQUELINE D. BERRY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A.No. 06-217-GMS
	:	
STATE OF DELAWARE,	:	
DIVISION OF CHILD SUPPORT,	:	
	:	
Defendant.	:	

**DECLARATION OF CHARLES E. HAYWARD**

I, Charles E. Hayward, pursuant to 28 U.S.C. § 1746 do hereby state the following under penalty of perjury:

1. I am the Director of the Delaware Division of Child Support Enforcement ["DCSE"] and have held the position since January 2001. DCSE is a division of the Department of Health and Social Services ["DHSS"].
2. DCSE is by statute mandated to secure the financial security of children by locating absent parents, establishing paternity, seeking, maintaining and enforcing child and medical support orders. DCSE has approximately 214 employees of all colors, creed, races and genders. I am an African American male.
3. I have the sole authority within DCSE to authorize hiring, promote, demote, suspend and discipline employees of the Division and only the Secretary of DHSS has the authority to terminate an employee.
4. I have personal knowledge as to the plaintiff, Jacqueline D. Berry (an African American female), while she was employed a DCSE. Ms. Berry was not subjected to any nature of discrimination nor was she subjected to retaliation. Ms. Berry's work performance problems were the result of her missing a great deal of work time and her own work place attitude.

5. Regarding plaintiff's claims as to her symptoms of carpal tunnel syndrome, typing on a computer keyboard while speaking on the telephone are essential qualifications for her duties as Child Support Specialist within the Consumer Service Unit.

/s/ Charles E. Hayward

Charles E. Hayward, Director  
Division of Child Support Enforcement